

1 be allowed under subsection (c) or (d) only if the applicable
2 requirements of subsection (g) have been satisfied.

3 ~~[(1)]~~ (b) Credit shall be allowed when the reinsurance is
4 ceded to an assuming insurer that is licensed to transact
5 insurance or reinsurance in this State ~~[-~~

6 ~~(2) Credit shall be allowed when the reinsurance is ceded~~
7 ~~to an assuming insurer that]~~, or is accredited by the
8 commissioner as a reinsurer in this State. ~~[An accredited~~
9 ~~reinsurer is one that:]~~ To be eligible for accreditation, a
10 reinsurer shall:

11 ~~[(A) Files]~~ (1) File with the commissioner evidence of its
12 submission to this State's jurisdiction;

13 ~~[(B) Submits]~~ (2) Submit to this State's authority to
14 examine its books and records;

15 ~~[(C) Is]~~ (3) Be licensed to transact insurance or
16 reinsurance in at least one state, or in the case of a
17 United States branch of an alien assuming insurer,
18 ~~[is]~~ be entered through and licensed to transact
19 insurance or reinsurance in at least one state;

20 ~~[(D) Files]~~ (4) File annually with the commissioner a copy
21 of its annual statement filed with the insurance



1 department of its state of domicile and a copy of its
2 most recent audited financial statement; and [either:

3 ~~(i) Maintains a surplus as regards policyholders in~~
4 ~~an amount that is not less than \$20,000,000 and~~
5 ~~whose accreditation has not been denied by the~~
6 ~~commissioner within ninety days of its~~
7 ~~submission; or~~

8 ~~(ii) Maintains a surplus as regards policyholders in~~
9 ~~an amount less than \$20,000,000 and whose~~
10 ~~accreditation has been approved by the~~
11 ~~commissioner.~~

12 ~~No credit shall be allowed a domestic ceding insurer, if~~
13 ~~the assuming insurer's accreditation has been revoked by~~
14 ~~the commissioner after notice and hearing.]~~

15 (5) Demonstrate to the satisfaction of the commissioner
16 that it has adequate financial capacity to meet its
17 reinsurance obligations and is otherwise qualified to
18 assume reinsurance from domestic insurers. An
19 assuming insurer is deemed to meet this requirement as
20 of the time of its application if it maintains a
21 surplus as regards policyholders in an amount not less
22 than \$20,000,000 and its accreditation has not been



1 denied by the commissioner within ninety days after
2 submission of its application.

3 ~~[(3)]~~ (c) Credit shall be allowed when the reinsurance is
4 ceded to an assuming insurer that is domiciled ~~[and licensed]~~
5 in, or in the case of a United States branch of an alien
6 assuming insurer is entered through, a state that employs
7 standards regarding credit for reinsurance equal to or exceeding
8 those applicable under this article and the assuming insurer or
9 United States branch of an alien assuming insurer:

10 ~~[(A)]~~ (1) Maintains a surplus as regards policyholders in
11 an amount not less than \$20,000,000; and

12 ~~[(B)]~~ (2) Submits to the authority of this State to
13 examine its books and records;

14 provided that ~~[the requirement of subparagraph (A)]~~ paragraph
15 (1) does not apply to reinsurance ceded and assumed pursuant to
16 pooling arrangements among insurers in the same holding company
17 system.

18 ~~[(4)]~~ (d) Credit shall be allowed as follows:

19 ~~[(A)]~~ (1) Credit shall be allowed when the reinsurance is
20 ceded to an assuming insurer that maintains a trust
21 fund in a qualified United States financial
22 institution, as defined in section 431:4A-103(b), for



1 the payment of the valid claims of its United States
2 [~~policyholders and~~] ceding insurers, their assigns [~~7~~]
3 and successors in interest. [~~The assuming insurer~~
4 shall report annually to the commissioner information
5 substantially the same as that required to be reported
6 on the National Association of Insurance Commissioners
7 annual statement form by licensed insurers to enable
8 the commissioner to determine the sufficiency of the
9 trust fund. In the case of] To enable the commissioner
10 to determine the sufficiency of the trust fund, the
11 assuming insurer shall report annually to the
12 commissioner information substantially the same as
13 that required to be reported on the National
14 Association of Insurance Commissioners' annual
15 statement form by licensed insurers. The assuming
16 insurer shall submit to examination of its books and
17 records by the commissioner and bear the expense of
18 examination;
19 (2) Credit for reinsurance shall not be granted under this
20 subsection unless the form of the trust and any
21 amendments to the trust have been approved by:



1 (A) The commissioner of the state where the trust is
2 domiciled; or

3 (B) The commissioner of another state who, pursuant
4 to the terms of the trust instrument, has
5 accepted principal regulatory oversight of the
6 trust.

7 The form of the trust and any trust amendments
8 shall also be filed with the commissioner of every
9 state in which the ceding insurer beneficiaries of the
10 trust are domiciled. The trust instrument shall
11 provide that contested claims shall be valid and
12 enforceable upon the final order of any court of
13 competent jurisdiction in the United States.

14 The trust shall vest legal title to its assets in
15 its trustees for the benefit of the assuming insurer's
16 United States ceding insurers, their assigns and
17 successors in interest. The trust and the assuming
18 insurer shall be subject to examination as determined
19 by the commissioner.

20 The trust shall remain in effect for as long as
21 the assuming insurer has outstanding obligations due
22 under the reinsurance agreements subject to the trust.



1 No later than February 28 of each year, the trustee of
2 the trust shall report to the commissioner in writing
3 the balance of the trust and listing the trust's
4 investments at the preceding year end and shall
5 certify the date of termination of the trust, if so
6 planned, or certify that the trust will not expire
7 prior to the following December 31;

8 (3) The following requirements shall apply to these
9 categories of assuming insurers:

10 (A) The trust fund for a single assuming insurer[~~-~~
11 ~~the trust]~~ shall consist of [~~a trusteeed account~~
12 ~~representing the] funds in trust in an amount not~~
13 less than the assuming insurer's liabilities
14 attributable to [~~business written in the United~~
15 ~~States] reinsurance ceded by United States ceding~~
16 insurers, and, in addition, the assuming insurer
17 shall maintain a trusteeed surplus of not less
18 than \$20,000,000[~~-~~], except as provided in
19 subparagraph (B);

20 (B) At any time after the assuming insurer has
21 permanently discontinued underwriting new
22 business secured by the trust for at least three



1 full years, the commissioner with principal
2 regulatory oversight of the trust may authorize a
3 reduction in the required trusteed surplus, but
4 only after finding, based on an assessment of the
5 risk, that the new required surplus level is
6 adequate for the protection of United States
7 ceding insurers, policyholders, and claimants in
8 light of reasonably foreseeable adverse loss
9 development. The risk assessment may involve an
10 actuarial review, including an independent
11 analysis of reserves and cash flows, and shall
12 consider all material risk factors, including
13 when applicable the lines of business involved,
14 the stability of the incurred loss estimates, and
15 the effect of the surplus requirements on the
16 assuming insurer's liquidity or solvency. The
17 minimum required trusteed surplus may not be
18 reduced to an amount less than thirty per cent of
19 the assuming insurer's liabilities attributable
20 to reinsurance ceded by United States ceding
21 insurers covered by the trust;



1 (C) In the case of a group including incorporated and
2 individual unincorporated underwriters [~~the~~
3 ~~trust shall consist of a trustee account~~
4 ~~representing the group's liabilities attributable~~
5 ~~to business written in the United States and, in~~
6 ~~addition,] :~~

7 (i) For reinsurance ceded under reinsurance
8 agreements with an inception, amendment, or
9 renewal date on or after January 1, 1993,
10 the trust shall consist of a trustee
11 account in an amount not less than the
12 respective underwriters' several liabilities
13 attributable to business ceded by United
14 States domiciled ceding insurers to any
15 underwriter of the group;

16 (ii) For reinsurance ceded under reinsurance
17 agreements with an inception date on or
18 before December 31, 1992, and not amended or
19 renewed after that date, notwithstanding the
20 other provisions of this article, the trust
21 shall consist of a trustee account in an
22 amount not less than the respective



1 underwriters' several insurance and
2 reinsurance liabilities attributable to
3 business written in the United States; and
4 (iii) In addition to these trusts, the group shall
5 maintain in trust a trusteed surplus of
6 which \$100,000,000 shall be held jointly for
7 the benefit of United States domiciled
8 ceding insurers of any member of the group [~~+~~
9 ~~the~~] for all years of account.

10 The incorporated members of the group shall
11 not be engaged in any business other than
12 underwriting as a member of the group and shall
13 be subject to the same level of [~~solvency~~]
14 regulation and solvency control by the group's
15 domiciliary regulator as are the unincorporated
16 members [~~+~~~~and~~].

17 Within ninety days after its financial
18 statements are due to be filed with the group's
19 domiciliary regulator, the group shall [~~make~~
20 ~~available~~] provide to the commissioner an annual
21 certification [~~of the solvency of each~~
22 ~~underwriter~~] by the group's domiciliary regulator



1 ~~[and its]~~ of the solvency of each underwriter
2 member; or if a certification is unavailable,
3 financial statements, prepared by independent
4 public accountants[7], of each underwriter member
5 of the group;

6 ~~[-B-]~~ (D) In the case of a group of incorporated
7 ~~[insurers]~~ underwriters under common
8 administration ~~[that complies with the filing~~
9 ~~requirements contained in subparagraph (A), and~~
10 ~~that has]~~, the group shall:

11 (i) Have continuously transacted an insurance
12 business outside the United States for at
13 least three years immediately prior to
14 making application for accreditation~~[, and~~
15 ~~that submits to this State's authority to~~
16 ~~examine its books and records and bears the~~
17 ~~expense of the examination, and that has]~~;

18 (ii) Maintain aggregate policyholders' surplus of
19 at least \$10,000,000,000 ~~[, the]~~;

20 (iii) Maintain a trust ~~[shall be]~~ fund in an
21 amount ~~[equal to]~~ not less than the group's
22 several liabilities attributable to business

1 ceded by United States domiciled ceding
2 insurers to any member of the group pursuant
3 to reinsurance contracts issued in the name
4 of such group; [~~and the group shall~~
5 ~~maintain~~]

6 (iv) Maintain a joint trusteed surplus[~~7~~] of
7 which \$100,000,000 shall be held jointly for
8 the benefit of United States domiciled
9 ceding insurers of any member of the group
10 as additional security for [~~any such~~] these
11 liabilities[~~, and each member of the group~~
12 ~~shall~~]; and

13 (v) Within ninety days after its financial
14 statements are due to be filed with the
15 group's domiciliary regulator, make
16 available to the commissioner an annual
17 certification of [~~the~~] each underwriter
18 member's solvency by the member's
19 domiciliary regulator and financial
20 statements of each underwriter member of the
21 group prepared by its independent public
22 accountant[~~7~~]



1 ~~(C) The trust shall be established in a form approved~~
2 ~~by the commissioner. The trust instrument shall~~
3 ~~provide that contested claims shall be valid and~~
4 ~~enforceable upon the final order of any court of~~
5 ~~competent jurisdiction in the United States. The~~
6 ~~trust shall vest legal title to its assets in the~~
7 ~~trustees of the trust for its United States~~
8 ~~policyholders and ceding insurers, their assigns,~~
9 ~~and successors in interest. The trust and the~~
10 ~~assuming insurer shall be subject to examination~~
11 ~~as determined by the commissioner. The trust~~
12 ~~must remain in effect for as long as the assuming~~
13 ~~insurer shall have outstanding obligations due~~
14 ~~under the reinsurance agreements subject to the~~
15 ~~trust; and~~

16 ~~(D) No later than February 28 of each year, the~~
17 ~~trustees of the trust shall report to the~~
18 ~~commissioner in writing setting forth the balance~~
19 ~~of the trust and listing the trust's investments~~
20 ~~at the preceding year end and shall certify the~~
21 ~~date of termination of the trust, if so planned,~~



1 ~~or certify that the trust shall not expire prior~~
2 ~~to the next following December 31].~~

3 (e) Credit shall be allowed when the reinsurance is ceded
4 to an assuming insurer that has been certified by the
5 commissioner as a reinsurer in this State and secures its
6 obligations in accordance with the requirements of this
7 subsection as follows:

8 (1) To be eligible for certification, the assuming insurer
9 shall:

10 (A) Be domiciled and licensed to transact insurance
11 or reinsurance in a qualified jurisdiction, as
12 determined by the commissioner pursuant to
13 paragraph (3);

14 (B) Maintain minimum capital and surplus, or its
15 equivalent, in an amount to be determined by the
16 rules adopted by the commissioner;

17 (C) Maintain financial strength ratings from two or
18 more rating agencies deemed acceptable by the
19 rules adopted by the commissioner;

20 (D) Agree to submit to the jurisdiction of this
21 State, appoint the commissioner as its agent for
22 service of process in this State, and agree to



1 provide security for one hundred per cent of the
2 assuming insurer's liabilities attributable to
3 reinsurance ceded by United States ceding
4 insurers if the assuming insurer resists
5 enforcement of a final United States judgment;

6 (E) Agree to meet applicable information filing
7 requirements as determined by the commissioner,
8 both with respect to an initial application for
9 certification and on an ongoing basis; and

10 (F) Satisfy any other requirements for certification
11 deemed relevant by the commissioner;

12 (2) An association including incorporated and individual
13 unincorporated underwriters may be a certified
14 reinsurer. To be eligible for certification, in
15 addition to satisfying the requirements of paragraph

16 (1):

17 (A) The association shall satisfy its minimum capital
18 and surplus requirements through the capital and
19 surplus equivalents (net of liabilities) of the
20 association and its members, which shall include
21 a joint central fund that may be applied to any
22 unsatisfied obligation of the association or any



1 of its members, in an amount determined by the
2 commissioner to provide adequate protection;

3 (B) The incorporated members of the association shall
4 not be engaged in any business other than
5 underwriting as a member of the association and
6 shall be subject to the same level of regulation
7 and solvency control by the association's
8 domiciliary regulator as are the unincorporated
9 members; and

10 (C) Within ninety days after its financial statements
11 are due to be filed with the association's
12 domiciliary regulator, the association shall
13 provide to the commissioner an annual
14 certification by the association's domiciliary
15 regulator of the solvency of each underwriter
16 member; or if a certification is unavailable,
17 financial statements, prepared by independent
18 public accountants, of each underwriter member of
19 the association;

20 (3) The commissioner shall create and publish a list of
21 qualified jurisdictions under which an assuming
22 insurer licensed and domiciled in a qualified

1 jurisdiction is eligible to be considered for
2 certification by the commissioner as a certified
3 reinsurer. In addition:

4 (A) To determine whether the domiciliary jurisdiction
5 of a non-United States assuming insurer is
6 eligible to be recognized as a qualified
7 jurisdiction, the commissioner shall evaluate the
8 appropriateness and effectiveness of the
9 reinsurance supervisory system of the
10 jurisdiction, both initially and on an ongoing
11 basis, and consider the rights, benefits, and the
12 extent of reciprocal recognition afforded by the
13 non-United States jurisdiction to reinsurers
14 licensed and domiciled in the United States. A
15 qualified jurisdiction shall agree to share
16 information and cooperate with the commissioner
17 with respect to all certified reinsurers
18 domiciled within that jurisdiction. A
19 jurisdiction may not be recognized as a qualified
20 jurisdiction if the commissioner has determined
21 that the jurisdiction does not adequately and
22 promptly enforce final United States judgments



- 1 and arbitration awards. Additional factors may
2 be considered in the discretion of the
3 commissioner;
- 4 (B) A list of qualified jurisdictions shall be
5 published through the National Association of
6 Insurance Commissioners committee process. The
7 commissioner shall consider this list in
8 determining qualified jurisdictions. If the
9 commissioner approves a jurisdiction as qualified
10 that does not appear on the list of qualified
11 jurisdictions, the commissioner shall provide
12 thoroughly documented justification in accordance
13 with criteria to be developed under rules adopted
14 by the commissioner;
- 15 (C) United States jurisdictions that meet the
16 requirement for accreditation under the National
17 Association of Insurance Commissioners financial
18 regulation standards and accreditation program
19 shall be recognized as qualified jurisdictions;
20 and
- 21 (D) If a certified reinsurer's domiciliary
22 jurisdiction ceases to be a qualified



1 jurisdiction, the commissioner has the discretion
2 to suspend the reinsurer's certification
3 indefinitely, in lieu of revocation;

4 (4) The commissioner shall assign a rating to each
5 certified reinsurer, giving due consideration to the
6 financial strength ratings that have been assigned by
7 rating agencies deemed acceptable pursuant to rules
8 adopted by the commissioner. The commissioner shall
9 publish a list of all certified reinsurers and their
10 ratings;

11 (5) A certified reinsurer shall secure obligations assumed
12 from United States ceding insurers under this
13 subsection at a level consistent with its rating, as
14 specified in rules adopted by the commissioner. In
15 addition:

16 (A) In order for a domestic ceding insurer to qualify
17 for full financial statement credit for
18 reinsurance ceded to a certified reinsurer, the
19 certified reinsurer shall maintain security in a
20 form acceptable to the commissioner and
21 consistent with section 431:4A-102, or in a
22 multibeneficiary trust in accordance with



1 subsection (d), except as otherwise provided in
2 this subsection;
3 (B) If a certified reinsurer maintains a trust to
4 fully secure its obligations subject to
5 subsection (d), and chooses to secure its
6 obligations incurred as a certified reinsurer in
7 the form of a multibeneficiary trust, the
8 certified reinsurer shall maintain separate trust
9 accounts for its obligations incurred under
10 reinsurance agreements issued or renewed as a
11 certified reinsurer with reduced security as
12 permitted by this subsection or comparable laws
13 of other United States jurisdictions and for its
14 obligations subject to subsection (d). It shall
15 be a condition to the grant of certification
16 under this subsection that the certified
17 reinsurer shall have bound itself, by the
18 language of the trust and agreement with the
19 commissioner with principal regulatory oversight
20 of each such trust account, to fund, upon
21 termination of any such trust account, out of the

1 remaining surplus of such trust any deficiency of
2 any other such trust account;

3 (C) The minimum trustee surplus requirements
4 provided in subsection (d) shall not be
5 applicable with respect to a multibeneficiary
6 trust maintained by a certified reinsurer for the
7 purpose of securing obligations incurred under
8 this subsection, except that such trust shall
9 maintain a minimum trustee surplus of
10 \$10,000,000;

11 (D) With respect to obligations incurred by a
12 certified reinsurer under this subsection, if the
13 security is insufficient, the commissioner shall
14 reduce the allowable credit by an amount
15 proportionate to the deficiency, and has the
16 discretion to impose further reductions in
17 allowable credit upon finding that there is a
18 material risk that the certified reinsurer's
19 obligations will not be paid in full when due;
20 and

21 (E) For purposes of this subsection:



1 (i) A certified reinsurer whose certification
2 has been terminated for any reason shall be
3 treated as a certified reinsurer required to
4 secure one hundred per cent of its
5 obligations;

6 (ii) "Terminated" means revoked, suspended,
7 voluntarily surrendered, or placed on
8 inactive status; and

9 (iii) If the commissioner continues to assign a
10 higher rating as permitted by other
11 provisions of this section, this requirement
12 shall not apply to a certified reinsurer in
13 inactive status or to a reinsurer whose
14 certification has been suspended;

15 (6) If an applicant for certification has been certified
16 as a reinsurer in a National Association of Insurance
17 Commissioners accredited jurisdiction, the
18 commissioner has the discretion to defer to that
19 jurisdiction's certification, and has the discretion
20 to defer to the rating assigned by that jurisdiction,
21 and such assuming insurer shall be considered to be a
22 certified reinsurer in this State; and



1 (7) A certified reinsurer that ceases to assume new
2 business in this State may request to maintain its
3 certification in inactive status to continue to
4 qualify for a reduction in security for its in-force
5 business. An inactive certified reinsurer shall
6 continue to comply with all applicable requirements of
7 this subsection, and the commissioner shall assign a
8 rating that takes into account, if relevant, the
9 reasons why the reinsurer is not assuming new
10 business.

11 [~~5~~] (f) Credit shall be allowed when the reinsurance is
12 ceded to an assuming insurer not meeting the requirements of
13 [~~paragraph (1), (2), (3), or (4),~~] subsection (b), (c), (d), or
14 (e), but only with respect to the insurance of risks located in
15 jurisdictions where the reinsurance is required by applicable
16 law or regulation of that jurisdiction.

17 [~~6~~] (g) If the assuming insurer is not licensed [~~or~~],
18 accredited, or certified to transact insurance or reinsurance in
19 this State, the credit permitted by [~~paragraphs (3) and (4)~~]
20 subsections (c) and (d) shall not be allowed unless the assuming
21 insurer agrees in the reinsurance agreements:



1 ~~[-(A)]~~ (1) That in the event of the failure of the assuming
2 insurer to perform its obligations under the terms of
3 the reinsurance agreement, the assuming insurer, at
4 the request of the ceding insurer, shall submit to the
5 jurisdiction of any court of competent jurisdiction in
6 any state of the United States, ~~[will]~~ shall comply
7 with all requirements necessary to give ~~[that]~~ the
8 court jurisdiction, and ~~[will]~~ shall abide by the
9 final decision of that court or of any appellate court
10 in the event of an appeal; and

11 ~~[-(B)]~~ (2) To designate the commissioner or a designated
12 attorney as its true and lawful attorney upon whom may
13 be served any lawful process in any action, suit, or
14 proceeding instituted by or on behalf of the ceding
15 ~~[company-]~~ insurer.

16 This ~~[paragraph]~~ subsection is not intended to conflict
17 with or override the obligation of the parties to a
18 reinsurance agreement to arbitrate their disputes, if ~~[such~~
19 ~~an]~~ this obligation is created in the agreement.

20 (h) If the assuming insurer does not meet the requirements
21 of subsection (b) or (c), the credit permitted by subsection (d)



1 or (e) shall not be allowed unless the assuming insurer agrees
2 in the trust agreements to the following conditions:

3 (1) Notwithstanding any other provisions in the trust
4 instrument to the contrary, if the trust fund is
5 inadequate because it contains an amount less than the
6 amount required by subsection (d) (3), or if the
7 grantor of the trust has been declared insolvent or
8 placed into receivership, rehabilitation, liquidation,
9 or similar proceedings under the laws of its state or
10 country of domicile, the trustee shall comply with an
11 order of the commissioner with regulatory oversight
12 over the trust or with an order of any court of
13 competent jurisdiction in any state of the United
14 States directing the trustee to transfer to the
15 commissioner with regulatory oversight all of the
16 assets of the trust fund;

17 (2) The assets shall be distributed by and claims shall be
18 filed with and valued by the commissioner with
19 regulatory oversight in accordance with the laws of
20 the state in which the trust is domiciled that are
21 applicable to the liquidation of domestic insurance
22 companies;



1 (3) If the commissioner with regulatory oversight
2 determines that the assets of the trust fund or any
3 part thereof are not necessary to satisfy the claims
4 of the United States ceding insurers of the grantor of
5 the trust, the assets or part thereof shall be
6 returned by the commissioner with regulatory oversight
7 to the trustee for distribution in accordance with the
8 trust agreement; and

9 (4) The grantor shall waive any right otherwise available
10 to it under United States law that is inconsistent
11 with this subsection.

12 (i) If an accredited or certified reinsurer ceases to meet
13 the requirements for accreditation or certification, the
14 commissioner may suspend or revoke the reinsurer's accreditation
15 or certification. In addition:

16 (1) The commissioner shall give the reinsurer notice and
17 opportunity for hearing. The suspension or revocation
18 may not take effect until after the commissioner's
19 order after a hearing, unless:

20 (A) The reinsurer waives its right to a hearing;

21 (B) The commissioner's order is based on regulatory

22 action by the reinsurer's domiciliary



1 jurisdiction or the voluntary surrender or
2 termination of the reinsurer's eligibility to
3 transact insurance or reinsurance business in its
4 domiciliary jurisdiction or in the primary
5 certifying state of the reinsurer under
6 subsection (e) (6); or

7 (C) The commissioner finds that an emergency requires
8 immediate action and a court of competent
9 jurisdiction has not stayed the commissioner's
10 action.

11 (2) While a reinsurer's accreditation or certification is
12 suspended, no reinsurance contract issued or renewed
13 after the effective date of the suspension qualifies
14 for credit except to the extent that the reinsurer's
15 obligations under the contract are secured in
16 accordance with section 431:4A-102. If a reinsurer's
17 accreditation or certification is revoked, no credit
18 for reinsurance may be granted after the effective
19 date of the revocation except to the extent that the
20 reinsurer's obligations under the contract are secured
21 in accordance with subsection (e) (5) or section
22 431:4A-102.



1 (j) A ceding insurer shall take steps to:
2 (1) Manage its reinsurance recoverables proportionate to
3 its own book of business. A domestic ceding insurer
4 shall notify the commissioner within thirty days after
5 reinsurance recoverables from any single assuming
6 insurer, or group of affiliated assuming insurers,
7 exceed fifty per cent of the domestic ceding insurer's
8 last reported surplus to policyholders, or after it is
9 determined that reinsurance recoverables from any
10 single assuming insurer, or group of affiliated
11 assuming insurers, are likely to exceed this limit.
12 The notification shall demonstrate that the exposure
13 is safely managed by the domestic ceding insurer; and
14 (2) Diversify its reinsurance program. A domestic ceding
15 insurer shall notify the commissioner within thirty
16 days after ceding to any single assuming insurer, or
17 group of affiliated assuming insurers, more than
18 twenty per cent of the ceding insurer's gross written
19 premium in the prior calendar year, or after it has
20 determined that the reinsurance ceded to any single
21 assuming insurer, or group of affiliated assuming
22 insurers, is likely to exceed this limit. The



1 notification shall demonstrate that the exposure is
2 safely managed by the domestic ceding insurer."

3 SECTION 2. Section 431:4A-102, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[+]§431:4A-102[-] Reduction~~ Asset or reduction from
6 liability for reinsurance ceded by a domestic insurer to an
7 assuming insurer. [A] An asset or reduction from liability for
8 the reinsurance ceded by a domestic insurer to an assuming
9 insurer not meeting the requirements of section 431:4A-101 shall
10 be allowed in an amount not exceeding the liabilities carried by
11 the ceding insurer. The reduction shall be in the amount of
12 funds held by or on behalf of the ceding insurer, including
13 funds held in trust for the ceding insurer, under a reinsurance
14 contract with the assuming insurer as security for the payment
15 of obligations thereunder, if that security is held in the
16 United States subject to withdrawal solely by, and under the
17 exclusive control of, the ceding insurer; or, in the case of a
18 trust, held in a qualified United States financial
19 institution~~[-]~~ as defined in section 431:4A-103 (b). This
20 security may be in the form of:

- 21 (1) Cash;



- 1 (2) Securities listed by the securities valuation office
2 of the National Association of Insurance
3 Commissioners, including those deemed exempt from
4 filing as defined by the Purposes and Procedures
5 Manual of the securities valuation office, and
6 qualifying as admitted assets;
- 7 (3) Clean, irrevocable, and unconditional letters of
8 credit, issued or confirmed by a qualified United
9 States financial institution, as defined in section
10 431:4A-103, effective no later than December [31st in
11 respect] 31 of the year for which the filing is being
12 made, and in the possession of, or in trust for, the
13 ceding [~~company~~] insurer on or before the filing date
14 of its annual statement [-];
- 15 (4) Letters of credit [~~issued by issuing (or confirming)~~
16 ~~institutions~~] meeting applicable standards of issuer
17 acceptability as of the dates of their issuance (or
18 confirmation) shall, notwithstanding the issuing (or
19 confirming) institution's subsequent failure to meet
20 applicable standards of issuer acceptability, continue
21 to be acceptable as security until their expiration,



1 extension, renewal, modification, or amendment,
2 whichever first occurs; or
3 ~~[(4)]~~ (5) Any other form of security acceptable to the
4 commissioner."

5 SECTION 3. Section 431:4A-105, Hawaii Revised Statutes, is
6 repealed.

7 ["~~§431:4A-105~~ ~~Reinsurance agreements affected.~~ Sections
8 ~~431:4A-101 through 431:4A-104 shall apply to all cessions after~~
9 ~~June 12, 1992, under reinsurance agreements which have had an~~
10 ~~inception, anniversary, or renewal date not less than six months~~
11 ~~after June 12, 1992.~~"]

12 PART II

13 SECTION 4. Section 431:5-307, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§431:5-307 Standard valuation law; life. (a) This
16 section shall be known as the standard valuation law.

17 (b) ~~[Reserve valuation:]~~

18 (1) For policies and contracts issued prior to the
19 operative date of the valuation manual:

20 (A) The commissioner~~[, annually, shall value,]~~ shall
21 annually value, or cause to be valued, the
22 reserve liabilities, hereinafter called reserves,



1 for all outstanding life insurance[7] policies
2 and annuity[7] and pure endowment contracts of
3 every life [~~insurer~~] insurance company doing
4 business in this State [~~The commissioner may~~
5 ~~certify the amount of any reserves, specifying~~
6 ~~the mortality table or tables, rate or rates of~~
7 ~~interest, and methods (net level premium method~~
8 ~~or others) used in the calculation of the~~
9 ~~reserves.]~~ issued on or after January 1, 1956,
10 and prior to the operative date of the valuation
11 manual. In calculating the reserves, the
12 commissioner may use group methods and
13 approximate averages for fractions of a year or
14 otherwise. In lieu of the valuation of the
15 reserves required [~~under this section of any~~] of
16 a foreign or alien [~~insurer,~~] company, the
17 commissioner may accept [~~any~~] a valuation made,
18 or caused to be made, by the insurance
19 supervisory official of any state or other
20 jurisdiction, when the valuation complies with
21 the minimum standard under this section [~~and if~~
22 ~~the official of that state or jurisdiction~~



1 ~~accepts as sufficient and valid for all legal~~
2 ~~purposes the certificate of valuation of the~~
3 ~~commissioner when the certification states the~~
4 ~~valuation to have been made in a specified manner~~
5 ~~according to which the aggregate reserves would~~
6 ~~be at least as large as if they had been computed~~
7 ~~in the manner prescribed by the law of that state~~
8 ~~or jurisdiction;~~

9 ~~(2) The actual cost of making valuations under this~~
10 ~~section shall be assessed on the insurer, whose~~
11 ~~policies are so valued, by the commissioner, and~~

12 ~~(3) Any insurer, at any time, that has adopted any~~
13 ~~standard of valuation producing greater aggregate~~
14 ~~reserves than those calculated according to the~~
15 ~~minimum standard herein provided, with the approval of~~
16 ~~the commissioner, may adopt any lower standard of~~
17 ~~valuation, but not lower than the minimum provided in~~
18 ~~this section.];~~

19 (B) Subsections (e) to (n) shall apply to all
20 policies and contracts, as appropriate, subject
21 to this section issued on or after January 1,
22 1956, and prior to the operative date of the



1 valuation manual; provided that subsections (o)
2 and (p) shall not apply to those policies and
3 contracts;

4 (C) The minimum standard for the valuation of
5 policies and contracts issued prior to January 1,
6 1956, shall be that provided by the laws in
7 effect immediately prior to that date;

8 (2) For policies and contracts issued on or after the
9 operative date of the valuation manual:

10 (A) The commissioner shall annually value, or cause
11 to be valued, the reserve liabilities,
12 hereinafter called reserves, for all outstanding
13 life insurance contracts, annuity and pure
14 endowment contracts, accident and health
15 contracts, and deposit-type contracts of every
16 company issued on or after the operative date of
17 the valuation manual. In lieu of the valuation
18 of the reserves required of a foreign or alien
19 company, the commissioner may accept a valuation
20 made, or caused to be made, by the insurance
21 supervisory official of any state or other



1 jurisdiction when the valuation complies with the
2 minimum standard provided in this section; and

3 (B) Subsections (o) and (p) shall apply to all
4 policies and contracts issued on or after the
5 operative date of the valuation manual.

6 (c) For an actuarial opinion prior to the operative date
7 of the valuation manual:

8 (1) Every life insurance company doing business in this
9 State shall annually submit the opinion of a qualified
10 actuary as to whether the reserves and related
11 actuarial items held in support of the policies and
12 contracts specified by the commissioner by rules are
13 computed appropriately, are based on assumptions that
14 satisfy contractual provisions, are consistent with
15 prior reported amounts, and comply with the applicable
16 laws of this State. The commissioner shall define by
17 rules the specifics of this opinion and add any other
18 items deemed to be necessary to its scope;

19 (2) For actuarial analysis of reserves and assets
20 supporting the reserves:

21 (A) Every life insurance company, except as exempted
22 by rules, shall also include annually in the



1 opinion required by paragraph (1), an opinion of
2 the same qualified actuary as to whether the
3 reserves and related actuarial items held in
4 support of the policies and contracts specified
5 by the commissioner by rules, when considered in
6 light of the assets held by the company with
7 respect to the reserves and related actuarial
8 items, including but not limited to the
9 investment earnings on the assets and the
10 considerations anticipated to be received and
11 retained under the policies and contracts, make
12 adequate provision for the company's obligations
13 under the policies and contracts, including but
14 not limited to the benefits under and expenses
15 associated with the policies and contracts; and
16 (B) The commissioner may provide by rules for a
17 transition period for establishing any higher
18 reserves that the qualified actuary may deem
19 necessary to render the opinion required by this
20 section;

21 (3) Each opinion required by paragraph (2) shall be
22 governed by the following:



- 1 (A) A memorandum, in form and substance acceptable to
- 2 the commissioner as specified by rules, shall be
- 3 prepared to support each actuarial opinion; and
- 4 (B) If the insurance company fails to provide a
- 5 supporting memorandum at the request of the
- 6 commissioner within a period specified by rules,
- 7 or if the commissioner determines that the
- 8 supporting memorandum provided by the insurance
- 9 company fails to meet the standards prescribed by
- 10 rules, or is otherwise unacceptable to the
- 11 commissioner, the commissioner may engage a
- 12 qualified actuary at the expense of the insurance
- 13 company to review the opinion and the basis for
- 14 the opinion and prepare the supporting memorandum
- 15 required by the commissioner; and
- 16 (4) Every opinion required by paragraph (1) shall be
- 17 governed by the following:
- 18 (A) The opinion shall be submitted with the annual
- 19 statement reflecting the valuation of the reserve
- 20 liabilities for each year ending on or after
- 21 December 31, 1995;



1 (B) The opinion shall apply to all business in force
2 including individual and group health insurance
3 plans, in form and substance acceptable to the
4 commissioner as specified by rules;

5 (C) The opinion shall be based on standards adopted
6 from time to time by the Actuarial Standards
7 Board or its successor and on any additional
8 standards as the commissioner may prescribe by
9 rules;

10 (D) In the case of an opinion required to be
11 submitted by a foreign or alien company, the
12 commissioner may accept the opinion filed by that
13 company with the insurance supervisory official
14 of another state if the commissioner determines
15 that the opinion reasonably meets the
16 requirements applicable to a company domiciled in
17 this State;

18 (E) For the purposes of this subsection, "qualified
19 actuary" means a member in good standing of the
20 American Academy of Actuaries who meets the
21 requirements set forth in the regulations adopted
22 by the American Academy of Actuaries;



- 1 (F) Except in cases of fraud or wilful misconduct,
2 the qualified actuary shall not be liable for
3 damages to any person, other than the insurance
4 company and the commissioner, for any act, error,
5 omission, decision, or conduct with respect to
6 the actuary's opinion;
- 7 (G) Disciplinary action by the commissioner against
8 the company or the qualified actuary shall be as
9 defined by rules;
- 10 (H) Except as provided in subparagraphs (L), (M), and
11 (N), documents, materials, or other information
12 in the possession or control of the insurance
13 division that are part of a memorandum in support
14 of the opinion, and any other material provided
15 by the company to the commissioner in connection
16 with the memorandum, shall be confidential by law
17 and privileged, shall not be disclosable under
18 chapter 92F, shall not be subject to subpoena,
19 and shall not be subject to discovery or
20 admissible in evidence in any private civil
21 action. However, the commissioner may use the
22 documents, materials, or other information in the



1 furtherance of any regulatory or legal action
2 brought as a part of the commissioner's official
3 duties;

4 (I) Neither the commissioner nor any person who
5 received documents, materials, or other
6 information while acting under the authority of
7 the commissioner shall be permitted or required
8 to testify in any private civil action concerning
9 any confidential documents, materials, or
10 information subject to subparagraph (H);

11 (J) To assist in the performance of the
12 commissioner's duties, the commissioner:
13 (i) May share documents, materials, or other
14 information, including the confidential and
15 privileged documents, materials, or
16 information subject to subparagraph (H) with
17 other state, federal, and international
18 regulatory agencies, with the National
19 Association of Insurance Commissioners and
20 its affiliates and subsidiaries, and with
21 state, federal, and international law
22 enforcement authorities; provided that the



1 recipient agrees to maintain the
2 confidentiality and privileged status of the
3 document, material, or other information;
4 and

5 (ii) May receive documents, materials, or
6 information, including otherwise
7 confidential and privileged documents,
8 materials, or information, from the National
9 Association of Insurance Commissioners and
10 its affiliates and subsidiaries, and from
11 regulatory and law enforcement officials of
12 other foreign or domestic jurisdictions, and
13 shall maintain as confidential or privileged
14 any document, material, or information
15 received with notice or the understanding
16 that it is confidential or privileged under
17 the laws of the jurisdiction that is the
18 source of the document, material, or
19 information;

20 (K) No waiver of any applicable privilege or claim of
21 confidentiality in the documents, materials, or
22 information shall occur as a result of disclosure



1 to the commissioner under this subsection or as a
2 result of sharing as authorized in subparagraph
3 (J) ;

4 (L) A memorandum in support of the opinion, and any
5 other material provided by the company to the
6 commissioner in connection with the memorandum,
7 may be subject to subpoena for the purpose of
8 defending an action seeking damages from the
9 actuary submitting the memorandum by reason of an
10 action required by this subsection or related
11 rules adopted by the commissioner;

12 (M) The memorandum or other material may otherwise be
13 released by the commissioner with the written
14 consent of the company or to the American Academy
15 of Actuaries upon request stating that the
16 memorandum or other material is required for the
17 purpose of professional disciplinary proceedings
18 and setting forth procedures satisfactory to the
19 commissioner for preserving the confidentiality
20 of the memorandum or other material; and

21 (N) Once any portion of the confidential memorandum
22 is cited by the company in its marketing or is



1 cited before a governmental agency other than a
2 state insurance department or is released by the
3 company to the news media, all portions of the
4 confidential memorandum shall be no longer
5 confidential.

6 (d) For actuarial opinions of reserves after the operative
7 date of the valuation manual:

8 (1) Every company with outstanding life insurance
9 contracts, accident and health insurance contracts, or
10 deposit-type contracts in this State and subject to
11 regulation by the commissioner shall annually submit
12 the opinion of the appointed actuary as to whether the
13 reserves and related actuarial items held in support
14 of the policies and contracts are computed
15 appropriately, are based on assumptions that satisfy
16 contractual provisions, are consistent with prior
17 reported amounts, and comply with applicable laws of
18 this State. The valuation manual shall prescribe the
19 specifics of this opinion including any items deemed
20 to be necessary to its scope;

21 (2) Every company with outstanding life insurance
22 contracts, accident and health insurance contracts, or



1 deposit-type contracts in this State and subject to
2 regulation by the commissioner, except as exempted in
3 the valuation manual, also shall annually include in
4 the opinion required by paragraph (1), an opinion of
5 the same appointed actuary as to whether the reserves
6 and related actuarial items held in support of the
7 policies and contracts specified in the valuation
8 manual, when considered in light of the assets held by
9 the company with respect to the reserves and related
10 actuarial items including but not limited to the
11 investment earnings on the assets and the
12 considerations anticipated to be received and retained
13 under the policies and contracts, make adequate
14 provision for the company's obligations under the
15 policies and contracts including but not limited to
16 the benefits under and expenses associated with the
17 policies and contracts;

18 (3) Each opinion required by this subsection shall be
19 governed by the following provisions:

20 (A) A memorandum, in form and substance as specified
21 in the valuation manual and acceptable to the



1 commissioner, shall be prepared to support each
2 actuarial opinion; and

3 (B) If the company fails to provide a supporting
4 memorandum at the request of the commissioner
5 within a period specified in the valuation
6 manual, or the commissioner determines that the
7 supporting memorandum provided by the insurance
8 company fails to meet the standards prescribed by
9 the valuation manual, or is otherwise
10 unacceptable to the commissioner, the
11 commissioner may engage a qualified actuary at
12 the expense of the insurance company to review
13 the opinion and the basis for the opinion and
14 prepare the supporting memorandum required by the
15 commissioner; and

16 (4) Every opinion subject to this subsection shall be
17 governed by the following provisions:

18 (A) The opinion shall be in form and substance as
19 specified in the valuation manual and acceptable
20 to the commissioner;

21 (B) The opinion shall be submitted with the annual
22 statement reflecting the valuation of such



1 reserve liabilities for each year ending on or
2 after the operative date of the valuation manual;

3 (C) The opinion shall apply to all policies and
4 contracts subject to paragraph (2), plus other
5 actuarial liabilities as may be specified in the
6 valuation manual;

7 (D) The opinion shall be based on standards adopted
8 from time to time by the Actuarial Standards
9 Board or its successor and on such additional
10 standards as may be prescribed in the valuation
11 manual;

12 (E) In the case of an opinion required to be
13 submitted by a foreign or alien company, the
14 commissioner may accept the opinion filed by that
15 company with the insurance supervisory official
16 of another state if the commissioner determines
17 that the opinion reasonably meets the
18 requirements applicable to a company domiciled in
19 this State;

20 (F) Except in cases of fraud or wilful misconduct,
21 the appointed actuary shall not be liable for
22 damages to any person, other than the insurance



1 company and the commissioner, for any act, error,
 2 omission, decision, or conduct with respect to
 3 the appointed actuary's opinion; and
 4 (G) Disciplinary action by the commissioner against
 5 the company or the appointed actuary shall be
 6 defined by rules adopted by the commissioner.

7 ~~[(c) Computation of minimum standard:~~

8 ~~(1) Old policies:]~~ (e) Except as otherwise provided in
 9 ~~[paragraph (3),]~~ subsections (f), (g), and (n), the minimum
 10 standard for the valuation of ~~[all]~~ policies and contracts
 11 issued prior to ~~[the operative date of section 431:10D-104,]~~
 12 January 1, 1956, shall be that provided by the laws in effect
 13 immediately prior to January 1, 1956~~[+]~~.

14 ~~[(2)]~~ Except as otherwise provided in ~~[paragraph (3),]~~
 15 subsections (f), (g), and (n), the minimum standard for the
 16 valuation of all policies and contracts issued on or after ~~[the~~
 17 ~~operative date of section 431:10D-104,]~~ January 1, 1956, shall
 18 be the commissioner's reserve valuation methods defined in
 19 subsections ~~[(d), (e), and]~~ (h), (i), (l), and (n), three and
 20 one-half per cent interest~~[+]~~, or in the case of life insurance
 21 policies and contracts, other than annuity and pure endowment
 22 contracts, issued on or after June 1, 1976, four per cent



1 interest[+] for [the] policies issued prior to June 1, 1979,
2 five and one-half per cent interest for single premium life
3 insurance policies, and four and one-half per cent interest for
4 all other policies issued on or after June 1, 1979[+] and the
5 following tables:

6 ~~[(A)]~~ (1) For ~~[all]~~ ordinary policies of life insurance
7 issued on the standard basis, excluding any accident
8 and health ~~[or sickness]~~ and accidental death benefits
9 in the policies[—]: the Commissioners 1941 Standard
10 Ordinary Mortality Table for the policies issued prior
11 to the operative date of section ~~[431:10D-104(e)(8),~~
12 ~~and]~~ 431:10D-104(e)(6), the Commissioners 1958
13 Standard Ordinary Mortality Table for the policies
14 issued on or after the operative date[+] of section
15 431:10D-104(e)(6) and prior to the operative date of
16 section 431:104(e)(8); provided that for any category
17 of the policies issued on female risks, all modified
18 net premiums and present values referred to in this
19 section may be calculated according to an age not more
20 than six years younger than the actual age of the
21 insured; and for the policies issued on or after the
22 operative date of section 431:10D-104(e)(8) [~~the~~]:



- 1 (A) The Commissioners 1980 Standard Ordinary
2 Mortality Table~~[, or at]~~;
- 3 (B) At the election of the company for any one or
4 more specified plans of life insurance, the
5 Commissioners 1980 Standard Ordinary Mortality
6 Table with Ten-Year Select Mortality Factors~~[, or~~
7 any];
- 8 (C) Any ordinary mortality table, adopted after 1980
9 by the National Association of Insurance
10 Commissioners, that is approved by rules adopted
11 by the commissioner for use in determining the
12 minimum standard of valuation for the policies;
- 13 ~~[(B)]~~ (2) For ~~[all]~~ industrial life insurance policies
14 issued on the standard basis, excluding any accident
15 and health ~~[or sickness]~~ and accidental death benefits
16 in the policies~~[-]~~; the 1941 Standard Industrial
17 Mortality Table for the policies issued prior to the
18 operative date of section 431:10D-104(e)(7), and for
19 ~~[the]~~ policies issued on or after the operative
20 date~~[,]~~ of section 431:10D-104(e)(7), the
21 Commissioners 1961 Standard Industrial Mortality Table
22 or any industrial mortality table adopted after 1980



1 by the National Association of Insurance
2 Commissioners~~[7]~~ that is approved by rules adopted by
3 the commissioner for use in determining the minimum
4 standard of valuation for ~~[these]~~ the policies;
5 ~~[(C)]~~ (3) For individual annuity and pure endowment
6 contracts, excluding any accident and health ~~[or~~
7 ~~sickness]~~ and accidental death benefits in the
8 policies~~[—]~~: the 1937 Standard Annuity Mortality
9 Table, or~~[7]~~ at the option of the ~~[insurer~~7~~]~~ company,
10 the Annuity Mortality Table for 1949, ultimate, or any
11 modification of either of these tables approved by the
12 commissioner;
13 ~~[(D)]~~ (4) For group annuity and pure endowment contracts,
14 excluding any accident and health ~~[or sickness]~~ and
15 accidental death benefits in the policies~~[—]~~: the
16 Group Annuity Mortality Table for 1951, ~~[any]~~ a
17 modification of the table approved by the
18 commissioner, or~~[7]~~ at the option of the ~~[insurer~~7~~]~~
19 company, any of the tables or modifications of tables
20 specified for individual annuity and pure endowment
21 contracts;



1 ~~[-E-]~~ (5) For total and permanent disability benefits in or
2 supplementary to ordinary policies or contracts~~[-]~~:
3 for policies or contracts issued after December 31,
4 1965, the tables of period 2 disablement rates and the
5 1930 to 1950 termination rates of the 1952 disability
6 study of the Society of Actuaries, with due regard to
7 the type of benefit or any tables of disablement rates
8 and termination rates~~[7]~~ adopted after 1980 by the
9 National Association of Insurance Commissioners, that
10 are approved by rules adopted by the commissioner for
11 use in determining the minimum standard of valuation
12 for ~~[the]~~ those policies; for policies or contracts
13 issued after December 31, 1960, and prior to
14 January 1, 1966, either the tables or, at the option
15 of the ~~[insurer,]~~ company, the Class (3) Disability
16 Table (1926); and for policies issued prior to
17 January 1, 1961, the Class (3) Disability Table
18 (1926). Any table, for active lives, shall be
19 combined with a mortality table permitted for
20 calculating the reserves for life insurance policies;

21 ~~[-F-]~~ (6) For accidental death benefits in or supplementary
22 to policies~~[-for policies]~~ issued after December 31,

1 1965[7]: the 1959 Accidental Death Benefits Table or
2 any accidental death benefits table[7] adopted after
3 1980 by the National Association of Insurance
4 Commissioners, that is approved by rules adopted by
5 the commissioner for use in determining the minimum
6 standard of valuation for [~~the~~] those policies[7], for
7 policies issued after December 31, 1960, and prior to
8 January 1, 1966, either [~~the~~] that table or, at the
9 option of the [~~insurer,~~] company, the Inter-company
10 Double Indemnity Mortality Table[7; ~~and for policies~~
11 ~~issued prior to January 1, 1961, the Inter-company~~
12 ~~Double Indemnity Mortality Table~~]. Either table shall
13 be combined with a mortality table [~~permitted~~] for
14 calculating the reserves for life insurance policies;
15 and

16 [~~(G)~~] (7) For group life insurance, life insurance issued
17 on the substandard basis, and other special benefits[
18 ~~any~~]: tables [~~that may be~~] approved by the
19 commissioner[7].

20 [~~(3)~~] (f) Except as provided in [~~paragraph (4),~~]
21 subsection (g), the minimum standard [~~for the~~] of valuation [~~of~~
22 ~~all~~] for individual annuity and pure endowment contracts issued



1 on or after the operative date of this [~~paragraph~~₇] subsection
2 and for [~~all~~] annuities and pure [~~endowments~~] endowment
3 contracts purchased on or after the operative date under group
4 annuity and pure endowment contracts, shall be the
5 commissioner's reserve valuation methods defined in subsections
6 [~~(d) and (e)~~] (h) and (i) and the following tables and interest
7 rates:

8 [~~(A)~~] (1) For individual annuity and pure endowment
9 contracts issued prior to June 1, 1979, excluding any
10 accident and health [~~or sickness~~] and accidental death
11 benefits in the contracts[~~—~~]: the 1971 Individual
12 Annuity Mortality Table, or any modification of this
13 table approved by the commissioner, and six per cent
14 interest for single premium immediate annuity
15 contracts, and four per cent interest for all other
16 individual annuity and pure endowment contracts;

17 [~~(B)~~] (2) For individual single premium immediate annuity
18 contracts issued on or after June 1, 1979, excluding
19 any accident and health [~~or sickness~~] and accidental
20 death benefits in the contracts[~~—~~]: the 1971
21 Individual Annuity Mortality Table[~~7~~] or any
22 individual annuity mortality table[~~7~~] adopted after



1 1980 by the National Association of Insurance
2 Commissioners, that is approved by rules adopted by
3 the commissioner for use in determining the minimum
4 standard of valuation for [~~the~~] these contracts, or
5 any modification of these tables approved by the
6 commissioner, and seven and one-half per cent
7 interest;

8 [~~(C)~~] (3) For individual annuity and pure endowment
9 contracts issued on or after June 1, 1979, other than
10 single premium immediate annuity contracts, excluding
11 any accident and health [~~or sickness~~] and accidental
12 death benefits in [~~the~~] those contracts[—]: the 1971
13 Individual Annuity Mortality Table or any individual
14 annuity mortality table[—] adopted after 1980 by the
15 National Association of Insurance Commissioners, that
16 is approved by rules adopted by the commissioner for
17 use in determining the minimum standard of valuation
18 for [~~the~~] those contracts, or any modification of
19 these tables approved by the commissioner, and five
20 and one-half per cent interest for single premium
21 deferred annuity and pure endowment contracts and four



1 and one-half per cent interest for all other
2 individual annuity and pure endowment contracts; ~~and~~
3 (4) For annuities and pure endowment contracts purchased
4 prior to June 1, 1979, under group annuity and pure
5 endowment contracts, excluding any accident and health
6 and accidental death benefits purchased under those
7 contracts: the 1971 Group Annuity Mortality Table or
8 any modification of this table approved by the
9 commissioner, and six per cent interest; and
10 ~~(5)~~ (5) For ~~all~~ annuities and pure ~~endowments~~
11 endowment contracts purchased on or after June 1,
12 1979, under group annuity and pure endowment
13 contracts, excluding any accident and health ~~or~~
14 sickness] and accidental death benefits ~~in the~~
15 purchased under those contracts~~—~~]: the 1971 Group
16 Annuity Mortality Table, or any group annuity
17 mortality table~~7~~ adopted after 1980 by the National
18 Association of Insurance Commissioners, that is
19 approved by rules adopted by the commissioner for use
20 in determining the minimum standard of valuation for
21 the annuities and pure ~~endowments7~~ endowment
22 contracts, or any modification of these tables



1 approved by the commissioner, and seven and one-half
2 per cent interest.

3 After June 1, 1976, any ~~[insurer]~~ company may file with the
4 commissioner a written notice of its election to comply with
5 this ~~[paragraph]~~ subsection after a specified date before
6 January 1, 1979, which shall be the operative date of this
7 ~~[paragraph]~~ subsection for ~~[the insurer; provided that an~~
8 ~~insurer may elect a different operative date for individual~~
9 ~~annuity and pure endowment contracts from that elected for group~~
10 ~~annuity and pure endowment contracts.]~~ that company. If ~~[an~~
11 ~~insurer]~~ a company makes no election, the operative date of this
12 ~~[paragraph]~~ subsection for ~~[the insurer]~~ that company shall be
13 January 1, 1979 ~~;~~ and

14 ~~(4) Applicability of this section:~~

15 ~~(A) The interest rates used in determining the~~
16 ~~minimum for the valuation of:~~

17 ~~(i) All life insurance policies issued in a~~
18 ~~particular calendar year, on or after the~~
19 ~~operative date of section 431:10D-104(c)(8);~~

20 ~~(ii) All individual annuity and pure endowment~~
21 ~~contracts issued in a particular calendar~~
22 ~~year after December 31, 1982;~~



1 ~~(iii) All annuities and pure endowments purchased~~
2 ~~in a particular calendar year after December~~
3 ~~31, 1982, under group annuity and pure~~
4 ~~endowment contracts, and~~

5 ~~(iv) The net increase, if any, in a particular~~
6 ~~calendar year after 1982, in amounts held~~
7 ~~under guaranteed interest contracts shall be~~
8 ~~the calendar year statutory valuation rates~~
9 ~~as defined in this paragraph,]~~ .

10 (g) (1) The interest rates used in determining the minimum
11 standard for the valuation of the following shall be
12 the calendar year statutory valuation interest rates
13 as defined in this section:

14 (A) Life insurance policies issued in a particular
15 calendar year, on or after the operative date of
16 section 431:10D-104 (e) (8) ;

17 (B) Individual annuity and pure endowment contracts
18 issued in a particular calendar year after
19 December 31, 1982;

20 (C) Annuities and pure endowment contracts purchased
21 in a particular calendar year after December 31,



1 ~~[(iii)]~~ (C) For other annuities with cash settlement
2 options and guaranteed interest contracts with
3 cash settlement options, valued on an issue year
4 basis, except as stated in ~~[clause (ii)]~~
5 subparagraph (B), the formula for life insurance
6 stated in ~~[clause (i)]~~ subparagraph (A) shall
7 apply to annuities and guaranteed interest
8 contracts with guarantee durations in excess of
9 ten years~~[7]~~ and the formula for single premium
10 immediate annuities stated in ~~[clause (ii)]~~
11 subparagraph (B) shall apply to annuities and
12 guaranteed interest contracts with guarantee
13 duration of ten years or less;

14 ~~[(iv)]~~ (D) For other annuities with no cash
15 settlement options and for guaranteed interest
16 contracts with no cash settlement options, the
17 formula for single premium immediate annuities
18 stated in ~~[clause (ii)]~~ subparagraph (B) shall
19 apply; and

20 ~~[(v)]~~ (E) For other annuities with cash settlement
21 options and guaranteed interest contracts with
22 cash settlement options, valued on a change in



1 fund basis, the formula for single premium
2 immediate annuities stated in [~~clause (ii)~~]
3 subparagraph (B) shall apply[+].
4 [~~(C)~~ ~~However, if~~] If the calendar year statutory valuation
5 interest rate for any life insurance policies issued
6 in any calendar year determined without reference to
7 this [~~sentence~~] subsection differs from the
8 corresponding actual rate for similar policies issued
9 in the immediately preceding calendar year by less
10 than one-half of one per cent, the calendar year
11 statutory valuation interest rate for [~~these~~] the life
12 insurance policies shall be equal to the corresponding
13 actual rate for the immediately preceding calendar
14 year. For purposes of applying the immediately
15 preceding sentence, the calendar year statutory
16 valuation interest rate for life insurance policies
17 issued in a calendar year shall be determined for 1980
18 (using the reference interest rate defined for 1979)
19 and shall be determined for each subsequent calendar
20 year regardless of when section 431:10D-104(e) (8)
21 becomes operative;

1 [~~D~~] (3) The weighting factors referred to in the formulas
2 stated [~~above~~] in paragraph (2) are given in the
3 following tables:

4 [~~i~~] (A) Weighting factors for life insurance:

5	Guarantee	
6	Duration	Weighting
7	<u>(Years)</u>	<u>Factors</u>
8	10 or [fewer] <u>(less)</u>	.50
9	More than 10, but not more	
10	than 20	.45
11	More than 20	.35

12 For life insurance, the guarantee duration is the
13 maximum number of years the life insurance can
14 remain in force on a basis guaranteed in the
15 policy[~~7~~] or under options to convert to plans of
16 life insurance with premium rates or
17 nonforfeiture values[~~7~~] or both, which are
18 guaranteed in the original policy;

19 [~~ii~~] (B) Weighting factor for single premium
20 immediate annuities and for annuity benefits
21 involving life contingencies arising from other
22 annuities with cash settlement options and



1 guaranteed interest contracts with cash
 2 settlement options: .80; and
 3 [~~(iii)~~] (C) Weighting factors for other annuities and
 4 for guaranteed interest contracts, except as
 5 stated in [~~elause (ii),~~] subparagraph (B), shall
 6 be as specified in the tables below, according to
 7 the rules and definitions stated below:

8 Table I:

9 For annuities and guaranteed interest contracts
 10 valued on an issue year basis[+]:

Guarantee	Weighting Factor		
Duration	For Plan Type		
<u>(Years)</u>	<u>A</u>	<u>B</u>	<u>C</u>
14 5 or less:	.80	.60	.50
15 More than 5, but not more			
16 than 10:	.75	.60	.50
17 More than 10, but not more			
18 than 20:	.65	.50	.45
19 More than 20:	.45	.35	.35
20			
	Plan Type		
21 <u>Table II:</u>	<u>A</u>	<u>B</u>	<u>C</u>



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For annuities and guaranteed
interest contracts valued on a
change in fund basis, the
factors shown in [~~clause (i)~~]

Table I increased by: .15 .25 .05
Plan Type

Table III: A B C

For annuities and guaranteed
interest contracts valued on an
issue year basis (other than
those with no cash settlement
options) [~~which~~] that do not
guarantee interest on
considerations received more
than one year after issue or
purchase[~~7~~] and for annuities
and guaranteed interest
contracts valued on a change in
fund basis [~~which~~] that do not
guarantee interest rates on
considerations received more
than twelve months beyond the



1 valuation date, the factors

2 shown in Table I or derived in

3 Table II increased by: .05 .05 .05

4 For other annuities with cash settlement options and
5 guaranteed interest contracts with cash settlement
6 options, the guarantee duration is the number of years
7 for which the contract guarantees interest rates in
8 excess of the calendar year statutory valuation
9 interest rate for life insurance policies with
10 guarantee duration in excess of twenty years. For
11 other annuities with no cash settlement options and
12 for guaranteed interest contracts with no cash
13 settlement options, the guarantee duration is the
14 number of years from the date of issue or date of
15 purchase to the date annuity benefits are scheduled to
16 commence. Plan type as used in the above tables is
17 defined as follows:

18 Plan Type A: At any time the policyholder
19 may withdraw funds only: (1) with an adjustment
20 to reflect changes in interest rates or asset
21 values since receipt of the funds by the
22 insurance company; (2) without an adjustment, but



1 in installments over five years or more; (3) as
2 an immediate life annuity; or (4) no withdrawal
3 permitted;

4 Plan Type B: Before expiration of the
5 interest rate guarantee, the policyholder may
6 withdraw funds only: (1) with an adjustment to
7 reflect changes in interest rates or asset values
8 since receipt of the funds by the insurance
9 company; (2) without an adjustment, but in
10 installments over five years or more; or (3) no
11 withdrawal permitted. At the end of the interest
12 rate guarantee, funds may be withdrawn without
13 adjustment in a single sum or in installments
14 over less than five years;

15 Plan Type C: The policyholder may withdraw
16 funds before expiration of the interest rate
17 guarantee in a single sum or in installments over
18 less than five years either: (1) without
19 adjustment to reflect changes in interest rates
20 or asset values since receipt of the funds by the
21 insurance company; or (2) subject only to a fixed



1 surrender charge stipulated in the contract as a
2 percentage of the fund.

3 A company may elect to value guaranteed
4 interest contracts with cash settlement options
5 and annuities with cash settlement options on
6 either an issue year basis or on a change in fund
7 basis. Guaranteed interest contracts with no
8 cash settlement options and other annuities with
9 no cash settlement options shall be valued on an
10 issue year basis. As used in this [~~section, an~~
11 ~~issue year basis of valuation refers to~~
12 subsection, "issue year basis" means a valuation
13 basis under which the interest rate used to
14 determine the minimum valuation standard for the
15 entire duration of the annuity or guaranteed
16 interest contract is the calendar year valuation
17 interest rate for the year of issue or year of
18 purchase of the annuity or guaranteed interest
19 contract, and [~~the change in fund basis of~~
20 ~~valuation refers to~~] "change in fund basis" means
21 a valuation basis under which the interest rate
22 used to determine the minimum valuation standard



1 applicable to each change in the fund held under
2 the annuity or guaranteed interest contract is
3 the calendar year valuation interest rate for the
4 year of the change in the fund;

5 ~~[-E-]~~ (4) The reference interest rate referred to in
6 paragraph ~~[-(4)-(B)-]~~ (2) shall be defined as follows:

7 ~~[-i-]~~ (A) For ~~[all]~~ life insurance, the lesser of the
8 average over a period of thirty-six months and
9 the average over a period of twelve months,
10 ending on June 30 of the calendar year ~~[next]~~
11 preceding the year of issue, of ~~[Moody's~~
12 ~~Corporate Bond Yield Average Monthly Average~~
13 ~~Corperates,]~~ the monthly average of composite
14 yield on seasoned corporate bonds, as published
15 by Moody's Investors Service, Inc.;

16 ~~[-ii-]~~ (B) For single premium immediate annuities and
17 for annuity benefits involving life contingencies
18 arising from other annuities with cash settlement
19 options and guaranteed interest contracts with
20 cash settlement options, the average over a
21 period of twelve months, ending on June 30 of the
22 calendar year of issue or year of purchase, ~~[of~~



1 ~~Moody's Corporate Bond Yield Average Monthly~~
2 ~~Average Corporates,~~ of the monthly average of
3 the composite yield on seasoned corporate bonds,
4 as published by Moody's Investors Service, Inc.;

5 ~~[(iii)]~~ (C) For other annuities with cash settlement
6 options and guaranteed interest contracts with
7 cash settlement options, valued on ~~[a year of~~
8 ~~issue]~~ an issue year basis, except as stated in
9 ~~[clause (ii),]~~ subparagraph (B), with guarantee
10 duration in excess of ten years, the lesser of
11 the average over a period of thirty-six months
12 and the average over a period of twelve months,
13 ending on June 30 of the calendar year of issue
14 or purchase, ~~[of Moody's Corporate Bond Yield~~
15 ~~Average Monthly Average Corporates,~~ of the
16 monthly average of the composite yield on
17 seasoned corporate bonds, as published by Moody's
18 Investors Service, Inc.;

19 ~~[(iv)]~~ (D) For other annuities with cash settlement
20 options and guaranteed interest contracts with
21 cash settlement options, valued on ~~[a year of~~
22 ~~issue]~~ an issue year basis, except as stated in



1 [~~elause (ii),~~] subparagraph (B), with guarantee
2 duration of ten years or less, the average over a
3 period of twelve months, ending on June 30 of the
4 calendar year of issue or purchase, [~~of Moody's~~
5 ~~Corporate Bond Yield Average Monthly Average~~
6 ~~Corporates,~~] of the monthly average of the
7 composite yield on seasoned corporate bonds, as
8 published by Moody's Investors Service, Inc.;

9 [~~(v)~~] (E) For other annuities with no cash settlement
10 options and for guaranteed interest contracts
11 with no cash settlement options, the average over
12 a period of twelve months, ending on June 30 of
13 the calendar year of issue or purchase, [~~of~~
14 ~~Moody's Corporate Bond Yield Average Monthly~~
15 ~~Average Corporates,~~] of the monthly average of
16 the composite yield on seasoned corporate bonds,
17 as published by Moody's Investors Service, Inc. ;
18 and

19 [~~(vi)~~] (F) For other annuities with cash settlement
20 options and guaranteed interest contracts with
21 cash settlement options, valued on a change in
22 fund basis, except as stated in [~~elause (ii),~~]



1 subparagraph (B), the average over a period of
2 twelve months, ending on June 30 of the calendar
3 year of the change in the fund, [~~of Moody's~~
4 ~~Corporate Bond Yield Average Monthly Average~~
5 ~~Corporates,~~] of the monthly average of the
6 composite yield on seasoned corporate bonds, as
7 published by Moody's Investors Service, Inc.; and
8 [~~(F) Alternative method for determining reference interest~~
9 ~~rates;~~]
10 (5) In the event that [~~Moody's Corporate Bond Yield~~
11 ~~Average Monthly Average Corporates~~] the monthly
12 average of the composite yield on seasoned corporate
13 bonds is no longer published by Moody's Investors
14 Service, Inc., or in the event that the National
15 Association of Insurance Commissioners determines that
16 [~~Moody's Corporate Bond Yield Average Monthly Average~~
17 ~~Corporates as published~~] the monthly average of the
18 composite yield on seasoned corporate bonds as
19 published by Moody's Investors Service, Inc., is no
20 longer appropriate for the determination of the
21 reference interest rate, then an alternative method
22 for determination of the reference interest rate [~~7~~



1 ~~which is~~] adopted by the National Association of
2 Insurance Commissioners and approved by rules adopted
3 by the commissioner[~~7~~] may be substituted.

4 ~~[(d) Commissioner's reserve valuation methods:~~

5 ~~(1)]~~ (h) (1) Except as otherwise provided in subsections
6 ~~[(e) and (h)7]~~ (i), (l), and (n), reserves, according
7 to the commissioner's reserve valuation [~~methods7~~]
8 method, for the life insurance and endowment benefits
9 of policies providing for a uniform amount of
10 insurance and requiring the payment of uniform
11 premiums shall be the excess, if any, of the present
12 value, at the date of valuation, of the future
13 guaranteed benefits provided for by the policies, over
14 the then present value of any future modified net
15 premiums therefor. The modified net premiums for [~~any~~
16 ~~such~~] a policy shall be the uniform percentage of the
17 respective contract premiums for the benefits
18 ~~[(excluding extra premiums on a substandard policy)]~~
19 such that the present value, at the date of issue of
20 the policy, of all the modified net premiums shall be
21 equal to the sum of the then present value of the



1 benefits provided for by the policy and the excess of
2 subparagraph (A) over subparagraph (B) as follows:

3 (A) A net level annual premium equal to the present
4 value, at the date of issue, of the benefits
5 provided for after the first policy year, divided
6 by the present value, at the date of issue, of an
7 annuity of one [~~a-year~~] per annum payable on the
8 first and each subsequent anniversary of the
9 policy on which a premium falls due; provided
10 that the net level annual premium shall not
11 exceed the net level annual premium on the
12 nineteen-year premium whole life plan for
13 insurance of the same amount at an age one year
14 higher than the age of issue of the policy; and

15 (B) A net one-year term premium for the benefits
16 provided for in the first policy year [~~;- provided~~
17 ~~that for any~~];

18 (2) For a life insurance policy issued on or after
19 January 1, 1986, for which the contract premium in the
20 first policy year exceeds that of the second year, and
21 for which no comparable additional benefit is provided
22 in the first year for the excess, [which] and that



1 provides an endowment benefit, a cash surrender value,
2 or a combination thereof, in an amount greater than
3 the excess premium, the reserve, according to the
4 commissioner's reserve valuation method as of any
5 policy anniversary occurring on or before the assumed
6 ending date, defined herein as the first policy
7 anniversary on which the sum of any endowment benefit
8 and any cash surrender value then available is greater
9 than the excess premium, except as otherwise provided
10 in subsection ~~[(h)-7]~~ (1), shall be the greater of the
11 reserve as of the policy anniversary calculated [~~as~~
12 ~~described above~~] pursuant to this paragraph and the
13 reserve as of the policy anniversary calculated as
14 described, but with:

- 15 ~~[(i)]~~ (A) The value defined in [~~subparagraph (A)]~~
16 paragraph (1) being reduced by fifteen per cent
17 of the amount of the excess first year premium;
18 ~~[(ii)]~~ (B) All present values of benefits and
19 premiums being determined without reference to
20 premiums or benefits provided for by the policy
21 after the assumed ending date;



1 ~~[(iii)]~~ (C) The policy being assumed to mature on that
2 date as an endowment; and

3 ~~[(iv)]~~ (D) The cash surrender value provided on that
4 date being considered as an endowment benefit.

5 In making the above comparison, the mortality and
6 interest bases stated in ~~[subsection (e)(2) and (3)]~~
7 subsections (e) and (g) shall be used; and

8 ~~[(2) Reserve]~~ (3) Reserves according to the
9 commissioner's reserve valuation ~~[methods for:]~~ method
10 shall be calculated by a method consistent with the
11 principles of paragraphs (1) and (2) for:

12 (A) Life insurance policies providing for a varying
13 amount of insurance or requiring the payment of
14 varying premiums;

15 (B) Group annuity and pure endowment contracts
16 purchased under a retirement plan or plan of
17 deferred compensation, established or maintained
18 by an employer (including a partnership or sole
19 proprietorship) or by an employee organization,
20 or by both, other than a plan providing
21 individual retirement accounts or individual
22 retirement annuities under section 408 of the



1 Internal Revenue Code, as now or hereafter
2 amended;
3 (C) Accident and health or sickness and accidental
4 death benefits in all policies and contracts; and
5 (D) All other benefits, except life insurance and
6 endowment benefits in life insurance policies and
7 benefits provided by all other annuity and pure
8 endowment contracts [~~7~~
9 ~~shall be calculated by a method consistent with the~~
10 ~~principles of this subsection]~~.

11 [~~(e)~~] (i) This subsection shall apply to all annuity and
12 pure endowment contracts other than group annuity and pure
13 endowment contracts purchased under a retirement plan or plan of
14 deferred compensation, established or maintained by an employer
15 (including a partnership or sole proprietorship) or by an
16 employee organization, or by both, other than a plan providing
17 individual retirement accounts or individual retirement
18 annuities under section 408 of the Internal Revenue Code, as now
19 or hereafter amended.

20 Reserves according to the commissioner's annuity reserve
21 method for benefits under annuity or pure endowment contracts,
22 excluding any accident and health or sickness and accidental



1 death benefits in [~~these~~] the contracts, shall be the greatest
2 of the respective excesses of the present values, at the date of
3 valuation, of the future guaranteed benefits, including
4 guaranteed nonforfeiture benefits, provided for by [~~these~~] the
5 contracts at the end of each respective contract year, over the
6 present value, at the date of valuation, of any future valuation
7 considerations derived from future gross considerations,
8 required by the terms of the contract, that become payable prior
9 to the end of [~~such~~] the respective contract year. The future
10 guaranteed benefits shall be determined by using the mortality
11 table, if any, and the interest rate, or rates, specified in the
12 contracts for determining guaranteed benefits. The valuation
13 considerations are the portions of the respective gross
14 considerations applied under the terms of the contracts to
15 determine nonforfeiture values.

16 [~~(f) Minimum aggregate reserves~~] (j) In no event shall
17 [~~an insurer's~~] a company's aggregate reserves for all life
18 insurance policies, excluding accident and health [~~or sickness~~]
19 and accidental death benefits, issued on or after [~~the operative~~
20 ~~date of section 431:10D-104,~~] January 1, 1956, be less than the
21 aggregate reserves calculated in accordance with the methods set
22 forth in subsections [~~(d), (e), (h), and (i),~~] (h), (i), (l),



1 and (m), and the mortality table or tables and rate or rates of
2 interest used in calculating nonforfeiture benefits for those
3 policies. In no event shall the aggregate reserves for all
4 policies, contracts, and benefits be less than the aggregate
5 reserves determined by the [~~qualified~~] appointed actuary to be
6 necessary to render the opinion required by [~~subsection (j)~~]
7 subsections (c) and (d).

8 [~~(g) Optional reserves bases~~] (k) With regard to
9 optional reserve calculation:

10 (1) Reserves for [~~any category of~~] policies [~~]~~ and
11 contracts [~~, or benefits as established by the~~
12 ~~commissioner, issued on or after the operative date of~~
13 ~~section 431:10D-104,~~] issued prior to January 1, 1956,
14 may be calculated, at the option of the [~~insurer,~~]
15 company, according to any standards [~~which~~] that
16 produce greater aggregate reserves for [~~the category~~
17 ~~than those calculated according to the minimum~~
18 ~~standard herein provided. The rates of interest used~~
19 ~~for policies and contracts, other than annuity and~~
20 ~~pure endowment contracts, shall not be higher than the~~
21 ~~corresponding rates of interest used in calculating~~
22 ~~any nonforfeiture benefits provided for therein. Any]~~



1 all such policies and contracts than the minimum
2 reserves required by the laws in effect immediately
3 prior to that date;

4 (2) Reserves for any category of policies, contracts, or
5 benefits established by the commissioner, issued on or
6 after January 1, 1956, may be calculated, at the
7 option of the company, according to any standards that
8 produce greater aggregate reserves for the category
9 than those calculated according to the minimum
10 standard provided herein, but the rate or rates of
11 interest used for policies and contracts, other than
12 annuity and pure endowment contracts, shall not be
13 greater than the corresponding rate or rates of
14 interest used in calculating any nonforfeiture
15 benefits provided in the policies or contracts; and

16 (3) A company, which adopts at any time [shall have
17 adopted any] a standard valuation producing greater
18 aggregate reserves than those calculated according to
19 the minimum standard [herein] provided[7] under this
20 section, may adopt a lower standard of valuation with
21 the approval of the commissioner, [may adopt any lower
22 standard of valuation,] but not lower than the minimum



1 ~~[herein]~~ provided~~[,]~~ herein; provided that for the
2 purposes of this section, the holding of additional
3 reserves previously determined by ~~[a-qualified]~~ the
4 appointed actuary to be necessary to render the
5 opinion required by ~~[subsection-(j)]~~ subsections (c)
6 and (d) shall not be deemed to be the adoption of a
7 higher standard of valuation.

8 ~~[(h)-Minimum reserve:]~~ (l) If in any contract year the
9 gross premium charged by ~~[any life insurer]~~ a company on ~~[any]~~ a
10 policy or contract is less than the valuation net premium for
11 the policy or contract calculated by the method used in
12 calculating the reserve ~~[thereon]~~ but using the minimum
13 valuation standards of mortality and rate of interest, the
14 minimum reserve required for ~~[that]~~ the policy or contract shall
15 be the greater of either the reserve calculated according to the
16 mortality table, rate of interest, and method actually used for
17 the policy or contract, or the reserve calculated by the method
18 actually used for the policy or contract, but using the minimum
19 valuation standards of mortality and rate of interest and
20 replacing the valuation net premium by the actual gross premium
21 in each contract year for which the valuation net premium
22 exceeds the actual gross premium. The minimum valuation



1 standards of mortality and rate of interest referred to in this
2 [section] subsection are those standards stated in [subsection
3 ~~(c) (1), (2), and (4); provided that for any~~ subsections (e) and
4 (g). For a life insurance policy issued on or after January 1,
5 1986, for which the gross premium in the first policy year
6 exceeds that of the second year and for which no comparable
7 additional benefit is provided in the first year for the excess
8 and [which] that provides an endowment benefit or a cash
9 surrender value, or a combination thereof, in an amount greater
10 than the excess premium, this subsection shall be applied as if
11 the method actually used in calculating the reserve for the
12 policy were the method described in subsection [~~(d)~~] (h),
13 ignoring [~~the second paragraph of that~~] subsection[-] (h) (2).
14 The minimum reserve at each policy anniversary of such a policy
15 shall be the greater of the minimum reserve calculated in
16 accordance with subsection [~~(d)~~] (h), including subsection
17 [~~(d)(2)~~] (h) (2) and the minimum reserve calculated in accordance
18 with this subsection.

19 [~~(i)~~] (m) In the case of any plan of life insurance
20 [which] that provides for future premium determination, the
21 amounts of which are to be determined by the insurance company
22 based on then estimates of future experience, or in the case of



1 any plan of life insurance or annuity [~~which~~] that is of such a
2 nature that the minimum reserves cannot be determined by the
3 methods described in subsections [~~(d), (e), and~~] (h), (i), and
4 (l), the reserves [~~which~~] that are held under [~~any such~~] the
5 plan [~~must~~] shall:

6 (1) Be appropriate in relation to the benefits and the
7 pattern of premiums for that plan; and

8 (2) Be computed by a method [~~which~~] that is consistent
9 with the principles of this section, as determined by
10 rules adopted by the commissioner.

11 [~~(j) The actuarial opinion of reserves and this subsection~~
12 ~~shall become effective December 31, 1995.~~

13 [~~(1) Every life insurance company doing business in this~~
14 ~~State shall annually submit the opinion of a qualified~~
15 ~~actuary as to whether the reserves and related~~
16 ~~actuarial items held in support of the policies and~~
17 ~~contracts specified by the commissioner, by rules, are~~
18 ~~computed appropriately, are based on assumptions which~~
19 ~~satisfy contractual provisions, are consistent with~~
20 ~~prior reported amounts, and comply with the applicable~~
21 ~~laws of this State. The commissioner, by rules, shall~~



1 ~~define the specifics of this opinion and add any other~~
2 ~~items deemed to be necessary to its scope,~~
3 ~~(2) Actuarial analysis of reserves and assets supporting~~
4 ~~the reserves:~~
5 ~~(A) Every life insurance company, except as exempted~~
6 ~~by or pursuant to rules, also shall include~~
7 ~~annually in the opinion required by paragraph~~
8 ~~(1), an opinion of the same qualified actuary as~~
9 ~~to whether the reserves and related actuarial~~
10 ~~items held in support of the policies and~~
11 ~~contracts specified by the commissioner by rules,~~
12 ~~when considered in light of the assets held by~~
13 ~~the company with respect to the reserves and~~
14 ~~related actuarial items, including but not~~
15 ~~limited to the investment earnings on the assets~~
16 ~~and the considerations anticipated to be received~~
17 ~~and retained under the policies and contracts,~~
18 ~~make adequate provision for the company's~~
19 ~~obligations under the policies and contracts,~~
20 ~~including but not limited to the benefits under,~~
21 ~~and expenses associated with, the policies and~~
22 ~~contracts; and~~



1 ~~(B) The commissioner may provide, by rules, for a~~
2 ~~transition period for establishing any higher~~
3 ~~reserves which the qualified actuary may deem~~
4 ~~necessary in order to render the opinion required~~
5 ~~by this section;~~

6 ~~(3) Each opinion required by paragraph (2) shall be~~
7 ~~governed by the following:~~

8 ~~(A) A memorandum, in form and substance acceptable to~~
9 ~~the commissioner as specified by rules, shall be~~
10 ~~prepared to support each actuarial opinion; and~~

11 ~~(B) If the insurance company fails to provide a~~
12 ~~supporting memorandum at the request of the~~
13 ~~commissioner within a period specified by rules~~
14 ~~or if the commissioner determines that the~~
15 ~~supporting memorandum provided by the insurer~~
16 ~~fails to meet the standards prescribed by rules~~
17 ~~or is otherwise unacceptable to the commissioner;~~
18 ~~the commissioner may engage a qualified actuary~~
19 ~~at the expense of the insurer to review the~~
20 ~~opinion and the basis for the opinion and prepare~~
21 ~~any supporting memorandum that is required by the~~
22 ~~commissioner; and~~



- 1 ~~(4) Every opinion shall be governed by the following:~~
- 2 ~~(A) The opinion shall be submitted with the annual~~
3 ~~statement reflecting the valuation of reserve~~
4 ~~liabilities for each year ending on or after~~
5 ~~December 31, 1995;~~
- 6 ~~(B) The opinion shall apply to all business in force~~
7 ~~including individual and group health insurance~~
8 ~~plans, in form and substance acceptable to the~~
9 ~~commissioner as specified by rules;~~
- 10 ~~(C) The opinion shall be based on standards adopted~~
11 ~~from time to time by the Actuarial Standards~~
12 ~~Board and on any [additional] standards that the~~
13 ~~commissioner may prescribe by rules;~~
- 14 ~~(D) In the case of an opinion required to be~~
15 ~~submitted by a foreign or alien insurer, the~~
16 ~~commissioner may accept the opinion filed by that~~
17 ~~insurer with the insurance supervisory official~~
18 ~~of another state if the commissioner determines~~
19 ~~that the opinion reasonably meets the~~
20 ~~requirements applicable to an insurer domiciled~~
21 ~~in this State;~~



- 1 ~~(E) For the purposes of this section, "qualified~~
2 ~~actuary" means a member in good standing of the~~
3 ~~American Academy of Actuaries who meets the~~
4 ~~requirements set forth in the regulations adopted~~
5 ~~by the American Academy of Actuaries;~~
- 6 ~~(F) Except in cases of fraud or wilful misconduct,~~
7 ~~the qualified actuary shall not be liable for~~
8 ~~damages to any person, other than the insurer and~~
9 ~~the commissioner, for any act, error, omission,~~
10 ~~decision, or conduct with respect to the~~
11 ~~actuary's opinion; and~~
- 12 ~~(G) Any memorandum in support of the opinion, and any~~
13 ~~other material provided by the insurer to the~~
14 ~~commissioner in connection therewith, shall be~~
15 ~~kept confidential by the commissioner and shall~~
16 ~~not be made public and shall not be subject to~~
17 ~~subpoena, other than for the purpose of defending~~
18 ~~an action seeking damages from any person by~~
19 ~~reason of any action required by this section, or~~
20 ~~by rules adopted hereunder; provided that the~~
21 ~~memorandum or other material may otherwise be~~
22 ~~released by the commissioner with the written~~



1 ~~consent of the insurer or be released to the~~
2 ~~American Academy of Actuaries upon request~~
3 ~~stating that the memorandum or other material is~~
4 ~~required for the purpose of professional~~
5 ~~disciplinary proceedings and setting forth~~
6 ~~procedures satisfactory to the commissioner for~~
7 ~~preserving the confidentiality of the memorandum~~
8 ~~or other material. Once any portion of the~~
9 ~~confidential memorandum is cited by the insurer~~
10 ~~in its marketing material or is cited before any~~
11 ~~governmental agency, other than a state insurance~~
12 ~~department, or is released by the insurer to the~~
13 ~~news media, all portions of the confidential~~
14 ~~memorandum shall no longer be confidential.]~~

15 (n) For accident and health insurance contracts issued on
16 or after the operative date of the valuation manual, the
17 standard prescribed in the valuation manual is the minimum
18 standard of valuation required under subsection (b) (2). For
19 accident and health or sickness insurance contracts issued on or
20 after January 1, 1956, and prior to the operative date of the
21 valuation manual, the minimum standard of valuation is the
22 standard adopted by the commissioner by rule.



1 (o) (1) For policies issued on or after the operative date
2 of the valuation manual, the standard prescribed in
3 the valuation manual is the minimum standard of
4 valuation required under subsection (b) (2), except as
5 provided under paragraph (5) or (7) of this
6 subsection;

7 (2) The operative date of the valuation manual is
8 January 1 of the first calendar year following the
9 first July 1 as of which all of the following have
10 occurred:

11 (A) The valuation manual has been adopted by the
12 National Association of Insurance Commissioners
13 by an affirmative vote of at least forty-two
14 members, or three-fourths of the members voting,
15 whichever is greater;

16 (B) The Standard Valuation Law, as amended by the
17 National Association of Insurance Commissioners
18 in 2009, or legislation including substantially
19 similar terms and provisions, has been enacted by
20 states representing greater than seventy-five per
21 cent of the direct premiums written as reported
22 in the following annual statements submitted for



1 2008: life, accident and health annual
2 statements; health annual statements; or
3 fraternal annual statements; and

4 (C) The Standard Valuation Law, as amended by the
5 National Association of Insurance Commissioners
6 in 2009, or legislation including substantially
7 similar terms and provisions, has been enacted by
8 at least forty-two of the following fifty-five
9 jurisdictions: the fifty states of the United
10 States, American Samoa, the American Virgin
11 Islands, the District of Columbia, Guam, and
12 Puerto Rico;

13 (3) Unless a change in the valuation manual specifies a
14 later effective date, changes to the valuation manual
15 shall be effective on January 1 following the date
16 when all of the following have occurred:

17 (A) The change to the valuation manual has been
18 adopted by the National Association of Insurance
19 Commissioners by an affirmative vote
20 representing:

21 (i) At least three-fourths of the members of the
22 National Association of Insurance



1 Commissioners voting, but not less than a
2 majority of the total membership; and
3 (ii) Members of the National Association of
4 Insurance Commissioners representing
5 jurisdictions totaling greater than seventy-
6 five per cent of the direct premiums written
7 as reported in the following annual
8 statements most recently available prior to
9 the vote in clause (i): life, accident and
10 health annual statements; health annual
11 statements; or fraternal annual statements;
12 and
13 (B) The valuation manual becomes effective pursuant
14 to rules adopted by the commissioner;
15 (4) The valuation manual shall specify all of the
16 following:
17 (A) Minimum valuation standards for and definitions
18 of the policies or contracts subject to
19 subsection (b) (2). These minimum valuation
20 standards shall be:
21 (i) The commissioner's reserve valuation method
22 for life insurance contracts, other than



- 1 annuity contracts, subject to subsection
2 (b) (2);
- 3 (ii) The commissioner's annuity reserve valuation
4 method for annuity contracts subject to
5 subsection (b) (2); and
- 6 (iii) Minimum reserves for all other policies or
7 contracts subject to subsection (b) (2);
- 8 (B) Which policies or contracts or types of policies
9 or contracts that are subject to the requirements
10 of a principle-based valuation in subsection
11 (p) (1) and the minimum valuation standards
12 consistent with those requirements;
- 13 (C) For policies and contracts subject to a
14 principle-based valuation under subsection (p):
- 15 (i) Requirements for the format of reports to
16 the commissioner under subsection (p) (2) (C)
17 that shall include information necessary to
18 determine if the valuation is appropriate
19 and in compliance with this section;
- 20 (ii) Assumptions shall be prescribed for risks
21 over which the company does not have
22 significant control or influence; and



- 1 (iii) Procedures for corporate governance and
- 2 oversight of the actuarial function, and a
- 3 process for appropriate waiver or
- 4 modification of such procedures;

- 5 (D) For policies not subject to a principle-based
- 6 valuation under subsection (p), the minimum
- 7 valuation standard shall either:

- 8 (i) Be consistent with the minimum standard of
- 9 valuation prior to the operative date of the
- 10 valuation manual; or

- 11 (ii) Develop reserves that quantify the benefits
- 12 and guarantees, and the funding, associated
- 13 with the contracts and their risks at a
- 14 level of conservatism that reflects
- 15 conditions that include unfavorable events
- 16 that have a reasonable probability of
- 17 occurring;

- 18 (E) Other requirements including but not limited to
- 19 those relating to reserve methods, models for
- 20 measuring risk, generation of economic scenarios,
- 21 assumptions, margins, use of company experience,
- 22 risk measurement, disclosure, certifications,



1 reports, actuarial opinions and memorandums,
2 transition rules, and internal controls; and
3 (F) The data and form of the data required under
4 subsection (q), with whom the data shall be
5 submitted, and may specify other requirements
6 including data analyses and reporting of
7 analyses;
8 (5) In the absence of a specific valuation requirement or
9 if a specific valuation requirement in the valuation
10 manual is not, in the opinion of the commissioner, in
11 compliance with this section, then the company shall,
12 with respect to these requirements, comply with
13 minimum valuation standards prescribed by the
14 commissioner by rule;
15 (6) The commissioner may engage a qualified actuary, at
16 the expense of the company, to perform an actuarial
17 examination of the company and opine on the
18 appropriateness of any reserve assumption or method
19 used by the company, or to review and opine on a
20 company's compliance with any requirement set forth in
21 this section. The commissioner may rely upon the
22 opinion, regarding provisions contained within this



1 section, of a qualified actuary engaged by the
2 commissioner of another state, district, or territory
3 of the United States. As used in this paragraph,
4 "engage" includes employment and contracting; and

5 (7) The commissioner may require a company to change any
6 assumption or method that in the opinion of the
7 commissioner is necessary to comply with the
8 requirements of the valuation manual or this section,
9 and the company shall adjust the reserves as required
10 by the commissioner. The commissioner may take other
11 disciplinary action as permitted pursuant to this
12 chapter.

13 (p) (1) A company shall establish reserves using a
14 principle-based valuation that meets the following
15 conditions for policies or contracts as specified in
16 the valuation manual:

17 (A) Quantify the benefits and guarantees, and the
18 funding, associated with the contracts and their
19 risks at a level of conservatism that reflects
20 conditions that include unfavorable events that
21 have a reasonable probability of occurring during
22 the lifetime of the contracts. For policies or



1 contracts with significant tail risk, the
2 valuation shall reflect conditions appropriately
3 adverse to quantify the tail risk;

4 (B) Incorporate assumptions, risk analysis methods
5 and financial models, and management techniques
6 that are consistent with, but not necessarily
7 identical to, those used within the company's
8 overall risk assessment process, while
9 recognizing potential differences in financial
10 reporting structures and any prescribed
11 assumptions or methods;

12 (C) Incorporate assumptions that are prescribed in
13 the valuation manual, or for assumptions that are
14 not prescribed, the assumptions shall:

15 (i) Be established using the company's available
16 experience, to the extent it is relevant and
17 statistically credible; or

18 (ii) To the extent that company data is not
19 available, relevant, or statistically
20 credible, be established using other
21 relevant, statistically credible experience;
22 and



1 (D) Provide margins for uncertainty including adverse
2 deviation and estimation error, such that the
3 greater the uncertainty, the larger the margin
4 and resulting reserve;

5 (2) A company using a principle-based valuation for one or
6 more policies or contracts subject to this section as
7 specified in the valuation manual shall:

8 (A) Establish procedures for corporate governance and
9 oversight of the actuarial valuation function
10 consistent with those described in the valuation
11 manual;

12 (B) Provide to the commissioner and to the company's
13 board of directors an annual certification of the
14 effectiveness of the internal controls with
15 respect to the principle-based valuation. These
16 controls shall be designed to assure that all
17 material risks inherent in the liabilities and
18 associated assets subject to the valuation are
19 included in the valuation, and that valuations
20 are made in accordance with the valuation manual.
21 The certification shall be based on the controls



1 in place as of the end of the preceding calendar
2 year; and

3 (C) Develop and file with the commissioner, upon
4 request, a principle-based valuation report that
5 complies with standards prescribed in the
6 valuation manual; and

7 (3) A principle-based valuation may include a prescribed
8 formulaic reserve component.

9 (q) On or after the operative date of the valuation
10 manual, a company shall submit mortality, morbidity,
11 policyholder behavior, or expense experience and other data as
12 prescribed in the valuation manual.

13 (r) (1) With respect to privilege for, and confidentiality
14 of, confidential information:

15 (A) Except as provided in this subsection, a
16 company's confidential information is
17 confidential by law and privileged, and shall not
18 be disclosable under chapter 92F, shall not be
19 subject to subpoena, and shall not be subject to
20 discovery or admissible in evidence in any
21 private civil action; provided that the
22 commissioner may use the confidential information



1 in the furtherance of any regulatory or legal
2 action brought against the company as a part of
3 the commissioner's official duties;

4 (B) Neither the commissioner nor any person who
5 received confidential information while acting
6 under the authority of the commissioner shall be
7 permitted or required to testify in any private
8 civil action concerning any confidential
9 information;

10 (C) To assist in the performance of the
11 commissioner's duties, the commissioner may share
12 confidential information:

13 (i) With other state, federal, and international
14 regulatory agencies and with the National
15 Association of Insurance Commissioners and
16 its affiliates and subsidiaries; and

17 (ii) In the case of confidential information
18 specified in paragraph (3)(A)(i) and (iv)
19 only, with the Actuarial Board for
20 Counseling and Discipline or its successor
21 upon request stating that the confidential
22 information is required for the purpose of



1 professional disciplinary proceedings and
2 with the state, federal, and international
3 law enforcement officials in the case of
4 this clause and clause (i); provided that
5 the recipient agrees, and has the legal
6 authority to agree, to maintain the
7 confidentiality and privileged status of the
8 documents, materials, data, and other
9 information in the same manner and to the
10 same extent as required for the
11 commissioner;

12 (D) The commissioner may receive documents,
13 materials, data, and other information, including
14 otherwise confidential and privileged documents,
15 materials, data, or information, from the
16 National Association of Insurance Commissioners
17 and its affiliates and subsidiaries, from
18 regulatory or law enforcement officials of other
19 foreign or domestic jurisdictions, and from the
20 Actuarial Board for Counseling and Discipline or
21 its successor and shall maintain as confidential
22 or privileged any document, material, data, or

1 other information received with notice or the
2 understanding that it is confidential or
3 privileged under the laws of the jurisdiction
4 that is the source of the document, material, or
5 other information;

6 (E) The commissioner may enter into agreements
7 governing the sharing and use of information
8 consistent with this paragraph;

9 (F) No waiver of any applicable privilege or claim of
10 confidentiality in the confidential information
11 shall occur as a result of disclosure to the
12 commissioner under this subsection or as a result
13 of sharing as authorized in subparagraph (C); and

14 (G) A privilege established under the law of any
15 state or jurisdiction that is substantially
16 similar to the privilege established under this
17 paragraph shall be available and enforced in any
18 proceeding in, and in any court of, this State;

19 (2) Notwithstanding paragraph (1), any confidential
20 information specified in paragraph (3) (A) (i) and (iv):

21 (A) May be subject to subpoena for the purpose of
22 defending an action seeking damages from the



1 appointed actuary submitting the related
2 memorandum in support of an opinion submitted
3 under subsections (c) and (d) or principle-based
4 valuation report developed under subsection
5 (p) (2) (C) by reason of an action required by this
6 section or by rules adopted hereunder;

7 (B) May otherwise be released by the commissioner
8 with the written consent of the company; and

9 (C) Once any portion of a memorandum in support of an
10 opinion submitted under subsections (c) and (d)
11 or a principle-based valuation report developed
12 under subsection (p) (2) (C) is cited by the
13 company in its marketing, is publicly volunteered
14 to or before a governmental agency other than a
15 state insurance department, or is released by the
16 company to the news media, all portions of the
17 memorandum or report shall no longer be
18 confidential; and

19 (3) For purposes of this section:

20 (A) "Confidential information" means:

21 (i) A memorandum in support of an opinion
22 submitted under subsections (c) and (d) and

1 any other documents, materials, and other
2 information, including but not limited to
3 all working papers and copies thereof,
4 created, produced, or obtained by or
5 disclosed to the commissioner or any other
6 person in connection with such memorandum;
7 (ii) All documents, materials, and other
8 information, including but not limited to
9 all working papers and copies thereof,
10 created, produced, or obtained by or
11 disclosed to the commissioner or any other
12 person in the course of an examination made
13 under subsection (o) (6); provided that if an
14 examination report or other material
15 prepared in connection with an examination
16 made under section 431:2-302 is not held as
17 private and confidential information under
18 section 431:2-305, an examination report or
19 other material prepared in connection with
20 an examination made under subsection (o) (6)
21 shall not be "confidential information" to
22 the same extent as if the examination report



1 or other material had been prepared under
2 section 431:2-305;

3 (iii) Any reports, documents, materials, and other
4 information developed by a company in
5 support of, or in connection with, an annual
6 certification by the company under
7 subsection (p) (2) (B) evaluating the
8 effectiveness of the company's internal
9 controls with respect to a principle-based
10 valuation and any other documents,
11 materials, and other information, including
12 but not limited to all working papers and
13 copies thereof, created, produced, or
14 obtained by, or disclosed to the
15 commissioner or any other person in
16 connection with such reports, documents,
17 materials, and other information;

18 (iv) Any principle-based valuation report
19 developed under subsection (p) (2) (C) and any
20 other documents, materials, and other
21 information, including but not limited to
22 all working papers and copies thereof,



1 created, produced, or obtained by, or
2 disclosed to the commissioner or any other
3 person in connection with the report; and
4 (v) Any documents, materials, data, and other
5 information submitted by a company under
6 subsection (q) (collectively, "experience
7 data") and any other documents, materials,
8 data, and other information, including but
9 not limited to all working papers and copies
10 thereof, created or produced in connection
11 with the experience data, in each case that
12 include any potentially company-identifying
13 or personally identifiable information, that
14 is provided to or obtained by the
15 commissioner (together with any "experience
16 data", the "experience materials") and any
17 other documents, materials, data, and other
18 information, including but not limited to
19 all working papers and copies thereof,
20 created, produced, or obtained by, or
21 disclosed to the commissioner or any other



1 person in connection with the experience
2 materials; and

3 (B) "Regulatory agency", "law enforcement agency",
4 and "National Association of Insurance
5 Commissioners" include but shall not be limited
6 to their employees, agents, consultants, and
7 contractors.

8 (s) The commissioner may exempt specific product forms or
9 product lines of a domestic company that is licensed and doing
10 business only in this State from the requirements of subsection
11 (o); provided that:

12 (1) The commissioner has issued an exemption in writing to
13 the company and has not subsequently revoked the
14 exemption in writing; and

15 (2) The company computes reserves using assumptions and
16 methods used prior to the operative date of the
17 valuation manual in addition to any requirements
18 established by the commissioner and adopted by rule.

19 For any company granted an exemption under this subsection,
20 subsections (c) to (n) shall be applicable. With respect to any
21 company applying this exemption, any reference to subsection (o)
22 found in subsections (c) to (n) shall not be applicable.



1 (t) As used in this section, the following definitions
2 shall apply on or after the operative date of the valuation
3 manual:

4 "Accident and health insurance" means a contract that
5 incorporates morbidity risk and provides protection against
6 economic loss resulting from accident, sickness, or medical
7 conditions and as may be specified in the valuation manual.

8 "Appointed actuary" means a qualified actuary who is
9 appointed in accordance with the valuation manual to prepare the
10 actuarial opinion required in subsection (d).

11 "Company" means an entity that:

12 (1) Has written, issued, or reinsured life insurance
13 contracts, accident and health insurance contracts, or
14 deposit-type contracts in this State and has at least
15 one such policy in force or on claim; or

16 (2) Has written, issued, or reinsured life insurance
17 contracts, accident and health insurance contracts, or
18 deposit-type contracts in any state and is required to
19 hold a certificate of authority to write life
20 insurance, accident and health insurance, or deposit-
21 type contracts in this State.



1 "Deposit-type contract" means a contract that does not
2 incorporate mortality or morbidity risks and as may be specified
3 in the valuation manual.

4 "Life insurance" means a contract that incorporates
5 mortality risk, including an annuity and a pure endowment
6 contract, and as may be specified in the valuation manual.

7 "Policyholder behavior" means any action that a
8 policyholder, contract holder, or any other person with the
9 right to elect options, such as a certificate holder, may take
10 under a policy or contract subject to this section including but
11 not limited to lapse, withdrawal, transfer, deposit, premium
12 payment, loan, annuitization, or benefit elections prescribed by
13 the policy or contract, but excluding events of mortality or
14 morbidity that result in benefits prescribed in their essential
15 aspects by the terms of the policy or contract.

16 "Principle-based valuation" means a reserve valuation that
17 uses one or more methods or one or more assumptions determined
18 by the insurer and is required to comply with subsection (p) as
19 specified in the valuation manual.

20 "Qualified actuary" means an individual who is qualified to
21 sign the applicable statement of actuarial opinion in accordance
22 with the American Academy of Actuaries qualification standards



1 for actuaries signing the statement and who meets the
2 requirements specified in the valuation manual.

3 "Tail risk" means a risk that occurs either where the
4 frequency of low probability events is higher than expected
5 under a normal probability distribution or where there are
6 observed events of very significant size or magnitude.

7 "Valuation manual" means the manual of valuation
8 instructions adopted by the National Association of Insurance
9 Commissioners as specified in this section or as subsequently
10 amended."

11 **PART III**

12 SECTION 5. Section 431:10D-104, Hawaii Revised Statutes,
13 is amended to read as follows:

14 **"§431:10D-104 Standard nonforfeiture law[+] for life**
15 **insurance [~~contracts~~].** (a) This section shall be known as the
16 Standard Nonforfeiture Law for Life Insurance.

17 (b) [~~Nonforfeiture provisions—life:~~] With regard to
18 nonforfeiture benefits of life insurance:

19 (1) In the case of policies issued on or after the
20 operative date of this section as defined in
21 subsection (i), no policy of life insurance, except as
22 stated in subsection (h), shall be delivered or issued



1 for delivery in this State unless it contains in
2 substance the following provisions, or corresponding
3 provisions [~~which~~] that in the opinion of the
4 commissioner are at least as favorable to the
5 defaulting or surrendering policyholder as are the
6 minimum requirements hereinafter specified and are
7 essentially in compliance with subsection (g):

8 (A) That, in the event of default in any premium
9 payment, the [~~insurer will~~] company shall grant,
10 upon proper request not later than sixty days
11 after the due date of the premium in default, a
12 paid-up nonforfeiture benefit on a plan
13 stipulated in the policy, effective as of the due
14 date, of [~~such value~~] an amount as may be
15 hereinafter specified. In lieu of [~~such~~] the
16 stipulated paid-up nonforfeiture benefit, the
17 [~~insurer~~] company may substitute, upon proper
18 request no later than sixty days after the due
19 date of the premium in default, an actuarially
20 equivalent alternative paid-up nonforfeiture
21 benefit [~~which~~] that provides a greater amount or
22 longer period of death benefits or, if



1 applicable, a greater amount or earlier payment
2 of endowment benefits.

3 (B) That, upon surrender of the policy within sixty
4 days after the due date of any premium payment in
5 default after premiums have been paid for at
6 least three full years in the case of ordinary
7 insurance or five full years in the case of
8 industrial insurance, the [~~insurer will~~] company
9 shall pay, in lieu of any paid-up nonforfeiture
10 benefit, a cash surrender value of [~~such~~] an
11 amount as may be hereinafter specified.

12 (C) That a specified paid-up nonforfeiture benefit
13 shall become effective as specified in the policy
14 unless the person entitled to make the election
15 elects another available option not later than
16 sixty days after the due date of the premium in
17 default.

18 (D) That, if the policy has been [~~paid-up~~] paid up by
19 completion of all premium payments or if it is
20 continued under any paid-up nonforfeiture benefit
21 [~~which~~] that became effective on or after the
22 third policy anniversary in the case of ordinary



1 insurance or the fifth policy anniversary in the
2 case of industrial insurance, the [~~insurer will~~]
3 company shall pay, upon surrender of the policy
4 within thirty days after any policy anniversary,
5 a cash surrender value of [~~such~~] an amount as may
6 be hereinafter specified.

7 (E) In the case of policies [~~which~~] that cause, on a
8 basis guaranteed in the policy, unscheduled
9 changes in benefits or premiums, or [~~which~~] that
10 provide an option for changes in benefits or
11 premiums other than a change to a new policy, a
12 statement of the mortality table, interest rate,
13 and method used in calculating cash surrender
14 values and the paid-up nonforfeiture benefits
15 available under the policy. In the case of all
16 other policies, a statement of the mortality
17 table and interest rate used in calculating the
18 cash surrender values and the paid-up
19 nonforfeiture benefits available under the
20 policy, together with a table showing the cash
21 surrender value, if any, and paid-up
22 nonforfeiture benefit, if any, available under



1 the policy on each policy anniversary either
2 during the first twenty policy years or during
3 the term of the policy, whichever is shorter,
4 [~~such~~] the values and benefits to be calculated
5 upon the assumption that there are no dividends
6 or paid-up additions credited to the policy and
7 that there is no indebtedness to the [~~insurer~~]
8 company on the policy.

9 (F) A statement that the cash surrender values and
10 the paid-up nonforfeiture benefits available
11 under the policy are not less than the minimum
12 values and benefits required by or pursuant to
13 the insurance law of the jurisdiction in which
14 the policy is delivered; an explanation of the
15 manner in which the cash surrender values and the
16 paid-up nonforfeiture benefits are altered by the
17 existence of any paid-up additions credited to
18 the policy or any indebtedness to the [~~insurer~~]
19 company on the policy; if a detailed statement of
20 the method of computation of the values and
21 benefits shown in the policy is not stated
22 therein, a statement that the method of

1 computation has been filed with the insurance
2 supervisory official of the jurisdiction in which
3 the policy is delivered; and a statement of the
4 method to be used in calculating the cash
5 surrender value and a paid-up nonforfeiture
6 benefit available under the policy on any policy
7 anniversary beyond the last anniversary for which
8 [~~such~~] values and benefits are consecutively
9 shown in the policy.

10 (2) Any of the [~~foregoing~~] provisions in paragraph (1) or
11 portions thereof not applicable by reason of the plan
12 of insurance may, to the extent inapplicable, be
13 omitted from the policy.

14 (3) The [~~insurer~~] company shall reserve the right to defer
15 the payment of any cash surrender value for a period
16 of six months after demand therefor with surrender of
17 the policy.

18 (c) [~~Cash surrender value—life:~~] With regard to the
19 computation of cash surrender value:

20 (1) Any cash surrender value available under the policy in
21 the event of default in a premium payment due on any
22 policy anniversary, [~~whether or not required by~~]



1 regardless of subsection (b), shall be an amount not
2 less than the excess, if any, of the present value, on
3 the anniversary, of the future guaranteed benefits
4 that would have been provided for by the policy,
5 including any existing paid-up additions, if there had
6 been no default, over the sum of:

7 (A) The then present value of the adjusted premiums
8 as defined in subsection (e) corresponding to
9 premiums that would have fallen due on and after
10 the anniversary; and

11 (B) The amount of any indebtedness to the [~~insurer~~]
12 company on [~~account of or secured by~~] the
13 policy[~~, provided that:~~
14 ~~(i)~~].

15 (2) For any policy issued on or after the operative date
16 of subsection (e) (8) that provides supplemental life
17 insurance or annuity benefits at the option of the
18 insured and for an identifiable additional premium by
19 rider or supplemental policy provision, the cash
20 surrender value referred to in [~~this~~] paragraph (1)
21 shall be an amount not less than the sum of the cash
22 surrender value for an otherwise similar policy issued



1 at the same age without [~~such~~] the rider or
2 supplemental policy provision and the cash surrender
3 value as defined in paragraph (1) for a policy that
4 provides only the benefits otherwise provided by
5 [~~such~~] the rider or supplemental policy provision[~~+~~
6 and] .

7 [~~(ii)~~] (3) For any family policy issued on or after the
8 operative date of subsection (e) (8) that defines a
9 primary insured and provides term insurance on the
10 life of the spouse of the primary insured expiring
11 before the spouse's seventy-first birthday, the cash
12 surrender value referred to in [~~this~~] paragraph (1)
13 shall be an amount not less than the sum of the cash
14 surrender value for an otherwise similar policy issued
15 at the same age without [~~such~~] term insurance on the
16 life of the spouse and the cash surrender value [~~for~~
17 ~~an otherwise similar policy issued at the same age~~
18 ~~without such rider or supplemental policy provision~~
19 ~~and the cash surrender value] as defined in paragraph
20 (1) for a policy that provides only the benefits
21 otherwise provided by [~~such~~] term insurance on the
22 life of the spouse.~~

1 ~~[(2)]~~ (4) Any cash surrender value available within thirty
2 days after any policy anniversary ~~[, of the future~~
3 ~~guaranteed benefits provided for by the policy~~
4 ~~including any existing paid-up additions, shall be~~
5 ~~decreased by any indebtedness to the insurer on~~
6 ~~account of or secured by the policy.]~~ under any policy
7 paid up by completion of all premium payments or any
8 policy continued under any paid-up nonforfeiture
9 benefit, regardless of subsection (b), shall be an
10 amount not less than the present value, on the
11 anniversary, of the future guaranteed benefits
12 provided for by the policy, including any existing
13 paid-up additions, decreased by any indebtedness to
14 the company on the policy.

15 (d) ~~[Paid-up nonforfeiture benefit—life: Any]~~ With
16 regard to the computation of paid-up nonforfeiture benefits, for
17 any paid-up nonforfeiture benefit available under the policy in
18 the event of default in a premium payment due on any policy
19 anniversary shall be such that its present value as of the
20 anniversary shall be at least equal to the cash surrender value
21 then provided for by the policy or, if none is provided for,
22 that cash surrender value ~~[which]~~ that would have been required



1 by this section in the absence of the condition that premiums
2 shall have been paid for at least a specified period.

3 (e) ~~[The adjusted premium—life:~~

4 ~~(1) This paragraph]~~ With regard to the calculation of
5 adjusted premiums:

6 (1) This section shall not apply to policies issued on or
7 after the operative date of paragraph (8) ~~[as defined~~
8 ~~therein]~~. Except as provided in paragraph (4), the
9 adjusted premiums for any policy shall be calculated
10 on an annual basis and shall be ~~[such]~~ a uniform
11 percentage of the respective premiums specified in the
12 policy for each policy year, excluding [extra premiums
13 on a substandard policy, that the present value, at
14 the date of issue of the policy,] amounts stated in
15 the policy as extra premiums to cover impairments or
16 special hazards of the present value at the date of
17 issue of the policy, of all such adjusted premiums
18 shall be equal to the sum of:

19 (A) The then present value of the future guaranteed
20 benefits provided for by the policy;

21 (B) Two per cent of the amount of insurance, if the
22 insurance is uniform in amount, or of the



1 equivalent uniform amount, as hereinafter
2 defined, if the amount of insurance varies with
3 duration of the policy;

4 (C) Forty per cent of the adjusted premium for the
5 first policy year; and

6 (D) Twenty-five per cent of either the adjusted
7 premium for the first policy year or the adjusted
8 premium for a whole life policy of the same
9 uniform or equivalent uniform amount with uniform
10 premiums for the whole of life issued at the same
11 age for the same amount of insurance, whichever
12 is less.

13 (2) ~~[This paragraph shall not apply to policies issued on~~
14 ~~or after the operative date of paragraph (8).]~~ In
15 applying the percentages specified in paragraph (1) (C)
16 and (D), no adjusted premium shall be deemed to exceed
17 four per cent of the amount of insurance or [uniform]
18 level amount equivalent ~~[thereto. Whenever the plan~~
19 ~~or term of a policy has been changed, either by~~
20 ~~request of the insured or automatically in accordance~~
21 ~~with the policy, the date of inception of the changed~~
22 ~~policy for the purposes of determining a nonforfeiture~~



1 ~~benefit or cash surrender value shall be the date as~~
2 ~~of which the age of the insured is determined for the~~
3 ~~purposes of the changed policy]. The date of issue of~~
4 ~~a policy for the purpose of this subsection shall be~~
5 ~~the date as of which the rated age of the insured is~~
6 ~~determined.~~

- 7 (3) ~~[This paragraph shall not apply to policies issued on~~
8 ~~or after the operative date of paragraph (8).]~~ In the
9 case of a policy providing an amount of insurance
10 varying with duration of the policy, the equivalent
11 ~~[uniform] level amount [thereof] for the purpose of~~
12 ~~this [paragraph] subsection shall be deemed to be the~~
13 ~~[uniform] level amount of insurance provided by an~~
14 otherwise similar policy, containing the same
15 endowment benefit or benefits, if any, issued at the
16 same age and for the same term, the amount of which
17 does not vary with duration and the benefits under
18 which have the same present value at the ~~[date of~~
19 ~~issue as the benefits under the policy.~~ In the case
20 of a policy providing a varying amount of insurance
21 ~~issued on the life of a child under age ten, the~~
22 ~~equivalent uniform amount may be computed as though~~



1 ~~the amount of insurance provided by the policy prior~~
2 ~~to the attainment of age ten was the amount provided~~
3 ~~by the policy at age ten.~~

4 ~~(4) This paragraph shall not apply to policies issued on~~
5 ~~or after the operative date of paragraph (8).]~~
6 inception of the insurance as the benefits under the
7 policy.

8 (4) The adjusted premiums for any policy providing term
9 insurance benefits by rider or supplemental policy
10 provision shall be equal to ~~the~~ :

11 (A) The adjusted premiums for an otherwise similar
12 policy issued at the same age without ~~such~~ the
13 term insurance benefits, increased, during the
14 period for which premiums for ~~such~~ the term
15 insurance benefits are payable, by ~~the~~

16 (B) The adjusted premiums for the term insurance.

17 The foregoing amounts in ~~paragraph (1)(A)]~~
18 subparagraphs (A) and (B) being calculated separately
19 and as specified in paragraphs (1) [~~-(2)-], and (3),~~
20 except that, for the purposes of paragraph (1)(B),
21 (C), and (D), the amount of insurance or equivalent
22 uniform amount of insurance used in the calculation of



1 the adjusted premiums referred to in paragraph (1)(B)
2 shall be equal to the excess of the corresponding
3 amount determined for the entire policy over the
4 amount used in the calculation of the adjusted
5 premiums in [~~paragraph (1)(A).~~] subparagraph (A).

6 (5) [~~This paragraph shall not apply to policies issued on~~
7 ~~or after the operative date of paragraph (8).~~] Except
8 as otherwise provided in paragraphs (6) and (7), all
9 adjusted premiums and present values referred to in
10 this section shall for all policies of ordinary
11 insurance be calculated on the basis of the
12 Commissioners 1941 Standard Ordinary Mortality Table;
13 provided that for any category of ordinary insurance
14 issued on female risks, adjusted premiums and present
15 values may be calculated according to [~~an~~] any age not
16 more than three years younger than the actual age of
17 the insured[~~]~~ and [~~such~~] the calculations for all
18 policies of industrial insurance shall be made on the
19 basis of the 1941 Standard Industrial Mortality Table.
20 All calculations shall be made on the basis of the
21 rate of interest, not exceeding three and one-half per
22 cent a year, specified in the policy for calculating



1 cash surrender values and paid-up nonforfeiture
2 benefits.

3 In calculating the present value of any paid-up
4 term insurance with accompanying pure endowment, if
5 any, offered as a nonforfeiture benefit, the rates of
6 mortality assumed may be not more than one hundred
7 thirty per cent of the rates of mortality according to
8 the applicable table.

9 For insurance issued on a substandard basis, the
10 calculation of any [~~such~~] adjusted premiums and
11 present values may be based on [~~such~~] any other table
12 of mortality as may be specified by the [~~insurer~~]
13 company and approved by the commissioner.

- 14 (6) This paragraph shall not apply to ordinary policies
15 issued on or after the operative date of paragraph
16 (8). In the case of ordinary policies issued on or
17 after the operative date of this paragraph, all
18 adjusted premiums and present values referred to in
19 this section shall be calculated on the basis of the
20 Commissioners 1958 Standard Ordinary Mortality Table[-

21 The] and the rate of interest specified in the
22 policy for calculating cash surrender values and paid-



1 up nonforfeiture benefits; provided that the rate of
2 interest shall not exceed three and one-half per cent
3 a year, except that:

4 (A) A rate of interest not exceeding four per cent a
5 year may be used for policies issued after
6 June 1, 1976, and prior to June 1, 1979;

7 (B) A rate of interest not exceeding five and one-
8 half per cent a year may be used for policies
9 issued on or after June 1, 1979; and

10 (C) For any single premium whole life or endowment
11 insurance policy, a rate of interest not
12 exceeding six and one-half per cent a year may be
13 used.

14 For any category of ordinary insurance issued on
15 female risks, adjusted premiums and present values may
16 be calculated according to an age not more than six
17 years younger than the actual age of the insured.

18 In calculating the present value of any paid-up
19 term insurance with accompanying pure endowment, if
20 any, offered as a nonforfeiture benefit, the rates of
21 mortality assumed may be not more than those shown in
22 the Commissioners 1958 Extended Term Insurance Table.



1 For insurance issued on a substandard basis, the
2 calculation of any adjusted premiums and present
3 values may be based on such other table of mortality
4 as may be specified by the [~~insurer~~] company and
5 approved by the commissioner.

6 After June 1, 1959, any [~~insurer~~] company may
7 file with the commissioner a written notice of its
8 election to comply with [~~the provisions of~~] this
9 paragraph after a specified date before January 1,
10 1966. After the filing of such notice, [~~then~~] upon
11 [~~such~~] the specified date (which shall be the
12 operative date of this paragraph for [~~such insurer~~],
13 that company), this paragraph shall become operative
14 with respect to the ordinary policies thereafter
15 issued by [~~such insurer~~] the company. If [~~an~~
16 ~~insurer~~] a company makes no such election, the
17 operative date of this paragraph for [~~such insurer~~]
18 the company shall be January 1, 1966.

- 19 (7) This paragraph shall not apply to industrial policies
20 issued on or after the operative date of paragraph
21 (8). In the case of industrial policies issued on or
22 after the operative date of this paragraph, all



1 adjusted premiums and present values referred to in
2 this section shall be calculated on the basis of the
3 Commissioners 1961 Standard Industrial Mortality
4 Table[-

5 ~~The~~ and the rate of interest specified in the
6 policy for calculating cash surrender values and paid-
7 up nonforfeiture benefits; provided that the rate of
8 interest shall not exceed three and one-half per cent
9 a year, except that:

- 10 (A) A rate of interest not exceeding four per cent a
11 year may be used for policies issued on or after
12 June 1, 1976, and prior to June 1, 1979;
- 13 (B) A rate of interest not exceeding five and one-
14 half per cent a year may be used for policies
15 issued on or after June 1, 1979; and
- 16 (C) For any single premium whole life or endowment
17 insurance policy a rate of interest not exceeding
18 six and one-half per cent a year may be used.

19 In calculating the present value of any
20 paid-up term insurance with accompanying pure
21 endowment, if any, offered as a nonforfeiture
22 benefit, the rates of mortality assumed may be



1 not more than those shown in the Commissioners
2 1961 Industrial Extended Term Insurance Table.

3 For insurance issued on a substandard basis,
4 the calculation of any adjusted premiums and
5 present values may be based on such other table
6 of mortality as may be specified by the [~~insurer~~]
7 company and approved by the commissioner.

8 After May 8, 1965, any [~~insurer~~] company may
9 file with the commissioner a written notice of
10 its election to comply with [~~the provisions of~~]
11 this paragraph after a specified date before
12 January 1, 1968. After the filing of [~~such~~] the
13 notice, [~~then~~] upon [~~such~~] the specified date
14 (which shall be the operative date of this
15 paragraph for [~~such insurer~~], that company),
16 this paragraph shall become operative with
17 respect to the industrial policies thereafter
18 issued by [~~such insurer~~] the company. If [~~an~~
19 ~~insurer~~] a company makes no such election, the
20 operative date of this paragraph for [~~such~~
21 ~~insurer~~] the company shall be January 1, 1968.



1 (8) (A) This paragraph shall apply to all policies issued
2 on or after the operative date of this paragraph.
3 Except as provided in subparagraph (G), the
4 adjusted premiums for any policy shall be
5 calculated on an annual basis and shall be [such]
6 a uniform percentage of the respective premiums
7 specified in the policy for each policy year,
8 excluding amounts payable as extra premiums to
9 cover impairments or special hazards and also
10 excluding any uniform annual contract charge or
11 policy fee specified in the policy in a statement
12 of the method to be used in calculating the cash
13 surrender values and paid-up nonforfeiture
14 benefits, that the present value, at the date of
15 issue of the policy, of all adjusted premiums
16 shall be equal to the sum of:

- 17 (i) The then present value of the future
18 guaranteed benefits provided for by the
19 policy;
- 20 (ii) One per cent of either the amount of
21 insurance, if the insurance be uniform in
22 amount, or the average amount of insurance



1 at the beginning of each of the first ten
2 policy years; and

3 (iii) One hundred twenty-five per cent of the
4 nonforfeiture net level premium as
5 hereinafter defined.

6 In applying the percentage specified in clause
7 (iii), no nonforfeiture net level premium shall
8 be deemed to exceed four per cent of either the
9 amount of insurance, if the insurance be uniform
10 in amount, or the average amount of insurance at
11 the beginning of each of the first ten policy
12 years. The date of issue of a policy for the
13 purpose of this paragraph shall be the date as of
14 which the rated age of the insured is determined.

15 (B) The nonforfeiture net level premium shall be
16 equal to the present value, at the date of issue
17 of the policy, of the guaranteed benefits
18 provided for by the policy divided by the present
19 value, at the date of issue of the policy, of an
20 annuity of one per annum payable on the date of
21 issue of the policy and on each anniversary of
22 [~~such~~] the policy on which a premium falls due.



1 (C) In the case of policies that cause, on a basis
2 guaranteed in the policy, unscheduled changes in
3 benefits or premiums, or that provide an option
4 for changes in benefits or premiums, other than a
5 change to a new policy, the adjusted premiums and
6 present values shall initially be calculated on
7 the assumption that future benefits and premiums
8 do not change from those stipulated at the date
9 of issue of the policy [~~immediately after the~~
10 ~~change~~]. At the time of any such change in the
11 benefit or premiums, the future adjusted
12 premiums, nonforfeiture net level premiums, and
13 present values shall be recalculated on the
14 assumption that future benefits and premiums do
15 not change from those stipulated by the policy
16 immediately after the change.

17 (D) Except as otherwise provided in subparagraph (G),
18 the recalculated future adjusted premiums for any
19 [~~such~~] policy shall be [~~such~~] the uniform
20 percentage of the respective future premiums
21 specified in the policy for each policy year,
22 excluding amounts payable as extra premiums to



1 cover impairments and special hazards, and also
2 excluding any uniform annual contract charge or
3 policy fee specified in the policy in a statement
4 of the method to be used in calculating the cash
5 surrender values and paid-up nonforfeiture
6 benefits, that the present value, at the time of
7 change to the newly defined benefits or premiums,
8 of all [~~such~~] the future adjusted premiums shall
9 be equal to the excess of the sum of:

10 (i) The then present value of the then future
11 guaranteed benefits provided for by the
12 policy; and

13 (ii) The additional expense allowance, if any,
14 over the then cash surrender value, if any,
15 or present value of any paid-up
16 nonforfeiture benefit under the policy.

17 (E) The additional expense allowance, at the time of
18 the change to the newly defined benefits or
19 premiums, shall be the sum of:

20 (i) One per cent of the excess, if positive, of
21 the average amount of insurance at the
22 beginning of each of the first ten policy

1 years subsequent to the change over the
2 average amount of insurance prior to the
3 change at the beginning of each of the first
4 ten policy years subsequent to the time of
5 the most recent previous change, or, if
6 there has been no previous change, the date
7 of issue of the policy; and

8 (ii) One hundred twenty-five per cent of the
9 increase, if positive, in the nonforfeiture
10 net level premium.

11 (F) The recalculated nonforfeiture net level premium
12 shall be equal to the result obtained by dividing
13 the value defined in clause (i) by the value
14 defined in clause (ii):

15 (i) The nonforfeiture net level premium
16 applicable prior to the charge times the
17 present value of an annuity of one per annum
18 payable on each anniversary of the policy on
19 or subsequent to the date of the charges on
20 which a premium would have fallen due had
21 the change not occurred, plus the present



1 value of the increase in future guaranteed
2 benefits provided for by the policy; and
3 (ii) The present value of an annuity of one per
4 annum payable on each anniversary of the
5 policy on or subsequent to the date of
6 charge on which a premium falls due.

7 (G) Notwithstanding any other provision of this
8 paragraph to the contrary, in the case of a
9 policy issued on a substandard basis that
10 provides reduced graded amounts of insurance so
11 that, in each policy year, such policy has the
12 same tabular mortality cost as an otherwise
13 similar policy issued on the standard basis that
14 provides higher uniform amounts of insurance,
15 adjusted premiums and present values for [such]
16 the substandard policy may be calculated as if it
17 were issued to provide such higher uniform
18 amounts of insurance on the standard basis.

19 (H) All adjusted premiums and present values referred
20 to in this section shall: for all policies of
21 ordinary insurance be calculated on the basis of
22 either the Commissioners 1980 Standard Ordinary



1 Mortality Table[7] or, at the election of the
2 company for any one or more specified plans of
3 life insurance, the Commissioners 1980 Standard
4 Ordinary Mortality Table with Ten-Year Select
5 Mortality Factors; for all policies of industrial
6 insurance be calculated on the basis of the
7 Commissioners 1961 Standard Industrial Mortality
8 Table; and for all policies issued in a
9 particular calendar year be calculated on the
10 basis of a rate of interest not exceeding the
11 nonforfeiture interest rate as defined in this
12 paragraph for policies issued in that calendar
13 year; provided that:

14 (i) At the option of the company, calculations
15 for all policies issued in a particular
16 calendar year may be made on the basis of a
17 rate of interest not exceeding nonforfeiture
18 interest rate, as defined in this paragraph,
19 for policies issued in the immediately
20 preceding calendar year;

21 (ii) Under any paid-up nonforfeiture benefit,
22 including any paid-up dividend additions,



1 any cash surrender value available, [~~whether~~
2 ~~or not required by~~] regardless of subsection
3 (b), shall be calculated on the basis of the
4 mortality table and rate of interest used in
5 determining the amount of such paid-up
6 nonforfeiture benefit and paid-up dividend
7 additions, if any;

8 (iii) A company may calculate the amount of any
9 guaranteed paid-up nonforfeiture benefit,
10 including any paid-up additions under the
11 policy on the basis of an interest rate no
12 lower than that specified in the policy for
13 calculating cash surrender values;

14 (iv) In calculating the present value of any
15 paid-up term insurance with accompanying
16 pure endowment, if any, offered as a
17 nonforfeiture benefit, the rates of
18 mortality assumed may be not more than those
19 shown in the Commissioners 1980 Extended
20 Term Insurance Table for policies of
21 ordinary insurance and not more than the
22 Commissioners 1961 Industrial Extended Term



1 Insurance Table for policies of industrial
2 insurance;

3 (v) For insurance issued on a substandard basis,
4 the calculation of any [~~such~~] adjusted
5 premiums and present values may be based on
6 appropriate modifications of the
7 aforementioned tables;

8 (vi) [~~Any~~] For policies issued prior to the
9 operative date of the valuation manual, any
10 commissioners standard ordinary mortality
11 tables, adopted after 1980 by the National
12 Association of Insurance Commissioners, that
13 are approved by rule by the commissioner for
14 use in determining the minimum nonforfeiture
15 standard may be substituted for the
16 Commissioners 1980 Standard Ordinary
17 Mortality Table with or without Ten-Year
18 Select Mortality Factors or for the
19 Commissioners 1980 Extended Term Insurance
20 Table [~~and~~].

21 For policies issued on or after the
22 operative date of the valuation manual, the



1 valuation manual shall provide the
2 commissioners standard mortality table for
3 use in determining the minimum nonforfeiture
4 standard that may be substituted for the
5 Commissioners 1980 Standard Ordinary
6 Mortality Table with or without Ten-Year
7 Select Mortality Factors or for the
8 Commissioners 1980 Extended Term Insurance
9 Table. If the commissioner approves by rule
10 any commissioners standard ordinary
11 mortality table adopted by the National
12 Association of Insurance Commissioners for
13 use in determining the minimum nonforfeiture
14 standard for policies issued on or after the
15 operative date of the valuation manual, then
16 that minimum nonforfeiture standard
17 supersedes the minimum nonforfeiture
18 standard provided by the valuation manual;
19 and

20 (vii) [Any] For policies issued prior to the
21 operative date of the valuation manual, any
22 commissioners standard industrial mortality



1 tables, adopted after 1980 by the National
2 Association of Insurance Commissioners, that
3 are approved by rule by the commissioner for
4 use in determining the minimum nonforfeiture
5 standard may be substituted for the
6 Commissioners 1961 Standard Industrial
7 Mortality Table or the Commissioners 1961
8 Industrial Extended Term Insurance Table.

9 For policies issued on or after the
10 operative date of the valuation manual, the
11 valuation manual shall provide the
12 commissioners standard mortality table for
13 use in determining the minimum nonforfeiture
14 standard that may be substituted for the
15 Commissioners 1961 Standard Industrial
16 Mortality Table or the Commissioners 1961
17 Industrial Extended Term Insurance Table.
18 If the commissioner approves by rule any
19 commissioners standard industrial mortality
20 table adopted by the National Association of
21 Insurance Commissioners for use in
22 determining the minimum nonforfeiture



1 standard for policies issued on or after the
2 operative date of the valuation manual, then
3 that minimum nonforfeiture standard
4 supersedes the minimum nonforfeiture
5 standard provided by the valuation manual.

6 (I) ~~[The nonforfeiture interest rate per annum for~~
7 ~~any policy issued in a particular calendar year]~~

8 As used in this paragraph, "nonforfeiture
9 interest rate" means:

10 (i) For policies issued prior to the operative
11 date of the valuation manual, the
12 nonforfeiture interest rate per annum for
13 any policy issued in a particular calendar
14 year shall be equal to one hundred twenty-
15 five per cent of the calendar year statutory
16 valuation interest rate for such policy as
17 defined in the Standard Valuation Law,
18 rounded to the nearer one quarter of one per
19 cent [-]; provided that the nonforfeiture
20 interest rate shall not be less than four
21 per cent; and



1 (ii) For policies issued on or after the
2 operative date of the valuation manual, the
3 nonforfeiture interest rate per annum for
4 any policy issued in a particular calendar
5 year shall be as provided by the valuation
6 manual.

7 (J) Notwithstanding any other provision in this
8 [~~code~~] chapter to the contrary, any refiling of
9 nonforfeiture values or their methods of
10 computation for any previously approved policy
11 form that involves only a change in the interest
12 rate or mortality table used to compute
13 nonforfeiture values shall not require refiling
14 of any other provisions of that policy form.

15 (K) After the effective date of this paragraph, any
16 company may file with the commissioner a written
17 notice of its election to comply with this
18 paragraph after a specified date before
19 January 1, 1989, which shall be the operative
20 date of this paragraph for [~~such~~] the company.
21 If a company makes no [~~such~~] election, the



1 operative date of this paragraph for [such] the
2 company shall be January 1, 1989.

3 (L) In the case of any plan of life insurance that
4 provides for future premium determination, the
5 amounts of which are to be determined by the
6 insurance company based on [~~then~~] estimates of
7 future experience, or in the case of any plan of
8 life insurance that is of such a nature that
9 minimum values cannot be determined by the
10 methods described in this subsection and
11 subsections (b) [~~-(e)-~~] to (d) [~~-(e)-~~], then:

12 (i) The commissioner shall be satisfied that the
13 benefits provided under the plan are
14 substantially as favorable to policyholders
15 and insureds as the minimum benefits
16 otherwise required by subsections (b) [~~-(e)-~~]
17 to (d) [~~-(e)-~~] and [~~-(e)-~~] this subsection;

18 (ii) The commissioner shall be satisfied that the
19 benefits and the pattern of premiums of that
20 plan are not such as to mislead prospective
21 policyholders or insureds; and



1 (iii) The cash surrender values and paid-up
2 nonforfeiture benefits provided by [such]
3 the plan shall not be less than the minimum
4 values and benefits required for the plan
5 computed by a method consistent with the
6 principles of this Standard Nonforfeiture
7 Law for Life Insurance, as determined by
8 rules adopted by the commissioner.

9 (f) [~~Calculation of values—life:~~] Any cash surrender
10 value and [~~any paid-up value and~~] any paid-up nonforfeiture
11 benefit, available under the policy in the event of default in a
12 premium payment due at any time other than on the policy
13 anniversary, shall be calculated with allowance for the lapse of
14 time and the payment of fractional premiums beyond the last
15 preceding policy anniversary. All values referred to in
16 subsections (c), (d), and (e) may be calculated upon the
17 assumption that any death benefit is payable at the end of the
18 policy year of death. The net value of any paid-up additions,
19 other than paid-up term additions, shall be not less than the
20 amounts used to provide such additions. Notwithstanding
21 subsection (c) [~~7~~] to the contrary, additional benefits payable:



- 1 (1) In the event of death or dismemberment by accident or
2 accidental means;
- 3 (2) In the event of total and permanent disability;
- 4 (3) As reversionary annuity or deferred reversionary
5 annuity benefits;
- 6 (4) As term insurance benefits provided by a rider or
7 supplemental policy provision to which, if issued as a
8 separate policy, this section would not apply;
- 9 (5) As term insurance on the life of a child or on the
10 lives of children provided in a policy on the life of
11 a parent of the child, if [~~such~~] the term insurance
12 expires before the child's age is twenty-six, is
13 uniform in amount after the child's age is one, and
14 has not become paid up by reason of the death of a
15 parent of the child; and
- 16 (6) As other policy benefits additional to life insurance
17 and endowment benefits, and premiums for all such
18 additional benefits,
19 shall be disregarded in ascertaining cash surrender values
20 and nonforfeiture benefits required by this section, and no
21 such additional benefits shall be required to be included
22 in any paid-up nonforfeiture benefits.



1 (g) This subsection, in addition to all other applicable
2 subsections [~~of this section~~], shall apply to all policies
3 issued on or after January 1, 1985. Any cash surrender value
4 available under the policy in the event of default in a premium
5 payment due on any policy anniversary shall be in an amount that
6 does not differ by more than two-tenths of one per cent of
7 either the amount of insurance, if the insurance be uniform in
8 amount, or the average amount of insurance at the beginning of
9 each of the first ten policy years, from the sum of the greater
10 of zero and the basic cash value hereinafter specified, and the
11 present value of any existing paid-up additions less the amount
12 of any indebtedness to the company under the policy.

13 The basic cash value shall be equal to the present value,
14 on [~~such~~] the anniversary, of the future guaranteed benefits
15 that would have been provided for by the policy, excluding any
16 existing paid-up additions and before deduction of any
17 indebtedness to the company, if there had been no default, less
18 the then present value of the nonforfeiture factors, as
19 hereinafter defined, corresponding to premiums that would have
20 fallen due on and after [~~such~~] the anniversary. The effects on
21 the basic cash value of supplemental life insurance or annuity
22 benefits or of family coverage, as described in subsection (c)



1 or (e)(1), (2), (3), (4), and (5), whichever is applicable,
2 shall be the same as are the effects specified in subsection (c)
3 or (e)(1), (2), (3), (4), and (5), whichever is applicable, on
4 the cash surrender values defined in that subsection.

5 The nonforfeiture factor for each policy year shall be an
6 amount equal to a percentage of the adjusted premium for the
7 policy year, as defined in subsection (e)(1), (2), (3), (4), and
8 (5) or subsection (e)(8), whichever is applicable. Except as is
9 required by the next succeeding sentence of this paragraph,
10 [~~such~~] the percentage:

- 11 (1) Shall be the same for each policy year between the
12 second policy anniversary and the later of:
- 13 (A) The fifth policy anniversary; and
- 14 (B) The first policy anniversary at which there is
15 available under the policy a cash surrender value
16 in an amount, before including any paid-up
17 additions and before deducting any indebtedness,
18 of at least two-tenths of one per cent of either
19 the amount of insurance, if the insurance be
20 uniform in amount, or the average amount of
21 insurance at the beginning of each of the first
22 ten policy years; and



1 (2) Shall be such that no percentage after the later of
2 the two policy anniversaries specified in paragraph
3 (1) may apply to fewer than five consecutive policy
4 years.

5 No basic cash value may be less than the value that would be
6 obtained if the adjusted premiums for the policy, as defined in
7 [~~subsection (e) (1), (2), (3), (4), and (5) or~~] subsection
8 (e) (8), [~~whichever is applicable,~~] were substituted for the
9 nonforfeiture factors in the calculation of the basic cash
10 value.

11 All adjusted premiums and present values referred to in
12 this subsection shall for a particular policy be calculated on
13 the same mortality and interest bases as are used in
14 demonstrating the policy's compliance with [~~the other~~
15 ~~subsections of~~] this section. The cash surrender values
16 referred to in this subsection shall include any endowment
17 benefits provided for by the policy.

18 Any cash surrender value available other than in the event
19 of default in a premium payment due on a policy anniversary, and
20 the amount of any paid-up nonforfeiture benefit available under
21 the policy in the event of default in a premium payment shall be
22 determined in manners consistent with the manners specified for



1 determining the analogous minimum amounts in subsections (b),
2 (c), (d), (e) (8), and (f). The amounts of any cash surrender
3 values and of any paid-up nonforfeiture benefits granted in
4 connection with additional benefits such as those listed [~~as~~
5 paragraphs ~~(1) through (6)~~] in subsection [~~(f)~~] (f) (1) to (6)
6 shall conform with the principles of this subsection.

7 (h) [~~Exceptions.~~] This section shall not apply to any of
8 the following:

- 9 (1) Reinsurance;
- 10 (2) Group insurance;
- 11 (3) Pure endowment;
- 12 (4) Annuity or reversionary annuity contract;
- 13 (5) Term policy uniform amount, which provides no
14 guaranteed nonforfeiture or endowment benefits, or
15 renewal thereof, of twenty years or less expiring
16 before age seventy-one, for which uniform premiums are
17 payable during the entire term of the policy;
- 18 (6) Term policy of decreasing amount, which provides no
19 guaranteed nonforfeiture or endowment benefits,
20 [~~issued at the same age and for the same initial~~
21 ~~amount of insurance and for a term of twenty years or~~
22 ~~less expiring before age seventy one, for which~~



1 ~~uniform premiums are payable during the entire term of~~
2 ~~the policy,]~~ on which each adjusted premium,
3 calculated as specified in subsection (e), is less
4 than the adjusted premium so calculated, on a term
5 policy of uniform amount, or renewal thereof, which
6 provides no guaranteed nonforfeiture or endowment
7 benefits, issued at the same age and for the same
8 initial amount of insurance and for a term of twenty
9 years or less expiring before age seventy-one, for
10 which uniform premiums are payable during the entire
11 term of the policy;

12 (7) Policy, which provides no guaranteed nonforfeiture or
13 endowment benefits, for which no cash surrender value,
14 if any, or present value of any paid-up nonforfeiture
15 benefit, at the beginning of any policy year
16 calculated as specified in subsections (c), (d), and
17 (e), exceeds two and one-half per cent of the amount
18 [en] of insurance at the beginning of the policy year;
19 and

20 (8) Policy [~~which~~] that shall be delivered outside this
21 State through a producer or other representative of
22 the company issuing the policy.



1 For purposes of determining the applicability of this
2 section, the age at expiry for a joint term life insurance
3 policy shall be the age at expiry of the oldest life.

4 (i) [~~Operative date.~~] After January 1, 1956, any
5 [~~insurer~~] company may file with the commissioner a written
6 notice of its election to comply with [~~the provisions of~~] this
7 section after a specified date within six months from January 1,
8 1956. After the filing of [~~such~~] the notice, then upon [~~such~~]
9 the specified date (which shall be the operative date for [~~such~~
10 ~~insurer~~], the company), this section shall become operative
11 with respect to the policies thereafter issued by [~~such~~
12 ~~insurer~~], the company. If [~~an insurer~~] a company makes no
13 [~~such~~] election, the operative date of this section for [~~such~~
14 ~~insurer~~] the company shall be six months from January 1, 1956.

15 (j) As used in this section, "operative date of the
16 valuation manual" means the January 1 of the first calendar year
17 that the valuation manual, as defined in section 431:5-307(t),
18 is effective."

19 PART IV

20 SECTION 6. Chapter 431, Hawaii Revised Statutes, is
21 amended by adding a new section to article 11 to be
22 appropriately designated and to read as follows:



1 "§431:11- Supervisory colleges. (a) With respect to
2 any insurer registered under section 431:11-105, and in
3 accordance with subsection (c), the commissioner may participate
4 in a supervisory college for any domestic insurer that is part
5 of an insurance holding company system with international
6 operations to determine compliance by the insurer with this
7 article. The powers of the commissioner with respect to
8 supervisory colleges shall include but not be limited to:

- 9 (1) Initiating the establishment of a supervisory college;
- 10 (2) Clarifying the membership and participation of other
11 supervisors in the supervisory college;
- 12 (3) Clarifying the functions of the supervisory college
13 and the role of other regulators, including the
14 establishment of a group-wide supervisor;
- 15 (4) Coordinating the ongoing activities of the supervisory
16 college, including planning meetings, supervisory
17 activities, and processes for information sharing; and
- 18 (5) Establishing a crisis management plan.

19 (b) Each registered insurer subject to this section shall
20 be liable for and shall pay the reasonable expenses of the
21 commissioner's participation in a supervisory college in
22 accordance with subsection (c), including reasonable travel

1 expenses. For purposes of this section, a supervisory college
2 may be convened as either a temporary or permanent forum for
3 communication and cooperation between the regulators charged
4 with the supervision of the insurer or its affiliates, and the
5 commissioner may establish a regular assessment to the insurer
6 for the payment of these expenses.

7 (c) To assess the business strategy, financial position,
8 legal and regulatory position, risk exposure, risk management,
9 and governance processes, and as part of the examination of
10 individual insurers in accordance with section 431:11-107, the
11 commissioner may participate in a supervisory college with other
12 regulators charged with supervision of the insurer or its
13 affiliates, including other state, federal, and international
14 regulatory agencies. The commissioner may enter into agreements
15 in accordance with section 431:11-108 providing the basis for
16 cooperation between the commissioner and the other regulatory
17 agencies, and the activities of the supervisory college.
18 Nothing in this section shall delegate to the supervisory
19 college the authority of the commissioner to regulate or
20 supervise the insurer or its affiliates within the
21 commissioner's jurisdiction."



1 SECTION 7. Section 431:11-102, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding two new definitions to be appropriately
4 inserted and to read:

5 "Domestic insurance holding company system" means an
6 insurance holding company system that consists of an ultimate
7 controlling person formed in this State prior to January 1,
8 2000, and its insurer affiliates, all of which are domestic
9 insurers authorized to transact insurance business only in this
10 State.

11 "Enterprise risk" means any activity, circumstance, event,
12 or series of events involving one or more affiliates of an
13 insurer that, if not remedied promptly, is likely to have a
14 material adverse effect upon the financial condition or
15 liquidity of the insurer or its insurance holding company system
16 as a whole, including but not limited to anything that would
17 cause the insurer's risk-based capital to fall into company
18 action level as set forth in section 431:3-403 or would cause
19 the insurer to be in hazardous financial condition as pursuant
20 to section 431:15-103.5."

21 2. By amending the definition of "person" to read:



1 "Person" means an individual, a corporation, a limited
2 liability company, a partnership, an association, a joint stock
3 company, a trust, an unincorporated organization, and any
4 similar entity or any combination of the foregoing acting in
5 concert, but shall not include any joint venture partnership
6 exclusively engaged in owning, managing, leasing, or developing
7 real or tangible personal property, or a securities broker
8 performing only the usual and customary broker's function."

9 SECTION 8. Section 431:11-104, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsections (a) and (b) to read:

12 "(a) The following are filing requirements for the
13 acquisition of control of or merger with a domestic insurer:

14 (1) No person other than the issuer shall make a tender
15 offer or a request or invitation for tenders[~~7~~] of, or
16 enter into any agreement to exchange securities[~~7~~—~~or~~]
17 for, seek to acquire, or acquire, in the open market
18 or otherwise, any voting security of a domestic
19 insurer if, after the consummation thereof, the
20 person, directly or indirectly (by conversion or by
21 exercise of any right to acquire), would be in control
22 of the insurer, and no person shall enter into an



1 agreement to merge with or otherwise to acquire
2 control of a domestic insurer or any person
3 controlling a domestic insurer unless, at the time any
4 offer, request, or invitation is made or [any] the
5 agreement is entered into, or prior to the acquisition
6 of the securities if no offer or agreement is
7 involved, the person has filed with the commissioner
8 and has sent to the insurer, and the insurer has sent
9 to its shareholders, a statement containing the
10 information required by ~~[subsection (b)]~~ this section
11 and the offer, request, invitation, agreement, or
12 acquisition has been approved by the commissioner in
13 the manner ~~[hereinafter]~~ prescribed[-] in this
14 article.

- 15 (2) For purposes of this section, any controlling person
16 of a domestic insurer seeking to divest its
17 controlling interest in the domestic insurer, in any
18 manner, shall file with the commissioner, with a copy
19 to the insurer, a confidential notice of its proposed
20 divestiture at least thirty days prior to the
21 cessation of control. The commissioner shall
22 determine those instances in which the party seeking



1 to divest or to acquire a controlling interest in an
2 insurer will be required to file for and obtain
3 approval of the transaction. The information shall
4 remain confidential until the conclusion of the
5 transaction unless the commissioner, in the
6 commissioner's discretion, determines that
7 confidential treatment will interfere with enforcement
8 of this section. If the statement referred to in
9 paragraph (1) is otherwise filed, this paragraph shall
10 not apply.

11 (3) With respect to a transaction subject to this section,
12 the acquiring person shall also file a preacquisition
13 notification with the commissioner containing the
14 information set forth in section 431:11-104.3(b).
15 Failure to file the notification may subject the
16 acquiring person to penalties specified in section
17 431:11-104.5(f).

18 (4) For purposes of this section [~~, a domestic insurer~~]:
19 "Domestic insurer" includes any person controlling a
20 domestic insurer unless the commissioner determines
21 that the person, directly or through its affiliates,
22 is primarily engaged in business other than the



1 business of insurance. [~~Such a person shall file a~~
2 ~~preacquisition notification with the commissioner~~
3 ~~containing the information set forth in section~~
4 ~~431:11-104.3(b) thirty days prior to the proposed~~
5 ~~effective date of the acquisition. Failure to file is~~
6 ~~subject to section 431:11-104.5(f). This section~~
7 ~~does]~~

8 "Person" shall not [~~apply to~~] include any securities
9 broker holding, in the usual and customary broker's
10 function, less than twenty per cent of the voting
11 securities of an insurance company or of any person
12 who controls an insurance company.

13 (b) The statement to be filed with the commissioner
14 hereunder shall be made under oath or affirmation and shall
15 contain the following information:

16 (1) The name and address of each person by whom or on
17 whose behalf the merger or other acquisition of
18 control referred to in subsection (a) is to be
19 effected (hereinafter called "acquiring party"), and:

20 (A) If the person is an individual, the principal
21 occupation and all offices and positions held by
22 the individual during the past five years, and

1 any conviction of crimes other than minor traffic
2 violations during the past ten years; or

3 (B) If the person is not an individual, a report of
4 the nature of its business operations during the
5 past five years or for such lesser period as the
6 person and any predecessors thereof shall have
7 been in existence; an informative description of
8 the business intended to be done by the person
9 and the person's subsidiaries; and a list of all
10 individuals who are or who have been selected to
11 become directors or executive officers of [~~such~~]
12 the person, or who perform or will perform
13 functions appropriate to the positions. The list
14 shall include for each individual the information
15 required by [~~+~~]subparagraph[~~+~~] (A);

16 (2) The source, nature, and amount of the consideration
17 used or to be used in effecting the merger or other
18 acquisition of control, a description of any
19 transaction wherein funds were or are to be obtained
20 for any purpose (including any pledge of the insurer's
21 stock, or the stock of any of its subsidiaries or
22 controlling affiliates), and the identity of persons



1 furnishing the consideration; provided that where a
2 source of the consideration is a loan made in the
3 lender's ordinary course of business, the identity of
4 the lender shall remain confidential, if the person
5 filing the statement requests confidentiality;

6 (3) Fully audited financial information as to the earnings
7 and financial condition of each acquiring party for
8 the preceding five fiscal years (or for the lesser
9 period as the acquiring party and any predecessors
10 thereof shall have been in existence), and similar
11 unaudited information as of a date not earlier than
12 ninety days prior to the filing of the statement;

13 (4) Any plans or proposals [~~which~~] that each acquiring
14 party may have to liquidate the insurer, to sell its
15 assets or merge or consolidate it with any person, or
16 to make any other material change in its business or
17 corporate structure or management;

18 (5) The number of shares of any security referred to in
19 subsection (a) [~~which~~] that each acquiring party
20 proposes to acquire, and the terms of the offer,
21 request, invitation, agreement, or acquisition
22 referred to in subsection (a), and a statement as to



1 the method by which the fairness of the proposal was
2 arrived at;

3 (6) The amount of each class of any security referred to
4 in subsection (a) [~~which~~] that is beneficially owned
5 or concerning which there is a right to acquire
6 beneficial ownership by each acquiring party;

7 (7) A full description of any contracts, arrangements, or
8 understandings with respect to any security referred
9 to in subsection (a) in which any acquiring party is
10 involved[~~7~~] including but not limited to transfer of
11 any of the securities, joint ventures, loan or option
12 arrangements, puts or calls, guarantees of loans,
13 guarantees against loss or guarantees of profits,
14 division of losses or profits, or the giving or
15 withholding of proxies. The description shall
16 identify the persons with whom the contracts,
17 arrangements, or understandings have been entered
18 into;

19 (8) A description of the purchase of any security referred
20 to in subsection (a) during the twelve calendar months
21 preceding the filing of the statement[~~7~~] by any
22 acquiring party, including the dates of purchase,



- 1 names of the purchasers, and considerations paid or
2 agreed to be paid therefore;
- 3 (9) A description of any recommendations to purchase any
4 security referred to in subsection (a) made during the
5 twelve calendar months preceding the filing of the
6 statement[~~7~~] by any acquiring party, or by anyone
7 based upon interviews or at the suggestion of [~~such~~]
8 the acquiring party;
- 9 (10) Copies of all tender offers[~~7~~] for, requests[~~7~~] or
10 invitation for tenders[~~7~~ ~~or~~] of, exchange offers for,
11 and agreements to acquire or exchange any securities
12 referred to in subsection (a), and (if distributed) of
13 additional soliciting material relating thereto;
- 14 (11) The term of any agreement, contract, or understanding
15 made with or proposed to be made with any
16 [~~broker/dealer~~] broker-dealer as to solicitation of
17 securities referred to in subsection (a) for tender,
18 and the amount of any fees, commissions, or other
19 compensation to be paid to [~~broker/dealers~~] broker-
20 dealers with regard thereto; [~~and~~]
- 21 (12) An agreement by the person required to file the
22 statement referred to in subsection (a) that the



1 person will provide the annual report, specified in
2 section 431:11-105(1), for so long as control exists;

3 (13) An acknowledgement by the person required to file the
4 statement referred to in subsection (a) that the
5 person and all subsidiaries within the person's
6 control in the insurance holding company system will
7 provide information to the commissioner upon request
8 as necessary to evaluate enterprise risk to the
9 insurer; and

10 [~~12~~] (14) Any additional information as the commissioner
11 may by rule [~~or regulation~~] prescribe as necessary or
12 appropriate for the protection of policyholders of the
13 insurer or in the public interest.

14 If the person required to file the statement referred to in
15 subsection (a) is a partnership, limited partnership, or other
16 group, the commissioner may require that the information called
17 for by [~~items~~] paragraphs (1) through [~~12~~] (14) shall be given
18 with respect to each partner of the partnership or limited
19 partnership, each member of the group, and each person who
20 controls such partner or member. If any partner, member, or
21 person is a corporation or the person required to file the
22 statement referred to in subsection (a) is a corporation, the



1 commissioner may require that the information called for by
2 [~~items~~] paragraphs (1) through [~~(12)~~] (14) shall be given with
3 respect to the corporation, each officer and director of the
4 corporation, and each person who is directly or indirectly the
5 beneficial owner of more than ten per cent of the outstanding
6 voting securities of the corporation.

7 If any material change occurs in the facts set forth in the
8 statement filed with the commissioner and sent to the insurer
9 pursuant to this section, an amendment setting forth the change,
10 together with copies of all documents and other material
11 relevant to the change, shall be filed with the commissioner and
12 sent to the insurer within two business days after the person
13 learns of the change. The insurer shall send the amendment to
14 its shareholders."

15 2. By amending subsection (d) to read:

16 "(d) (1) The commissioner shall approve any merger or other
17 acquisition of control referred to in subsection (a)
18 unless, after a public hearing thereon, the
19 commissioner finds that:

20 (A) After the change of control, the domestic insurer
21 referred to in subsection (a) would not be able
22 to satisfy the requirements for the issuance of a



1 license to write the line or lines of insurance
2 for which it is presently licensed;

3 (B) The effect of the merger or other acquisition of
4 control would be substantially to lessen
5 competition in insurance in this State or tend to
6 create a monopoly therein[+]. In applying the
7 competitive standard in this subparagraph:

8 (i) The informational requirements of section
9 431:11-104.3(b) and the standards of section
10 431:11-104.4(b) shall apply;

11 (ii) The merger or other acquisition shall not be
12 disapproved if the commissioner finds that
13 any of the situations meeting the criteria
14 provided by section 431:11-104.4(c) exist;
15 and

16 (iii) The commissioner may condition the approval
17 of the merger or other acquisition on the
18 removal of the grounds for disapproval
19 within a specified period of time;

20 (C) The financial condition of any acquiring party
21 might jeopardize the financial stability of the



1 insurer^[7] or prejudice the interest of its
2 policyholders;

3 (D) The plans or proposals [~~which~~] that the acquiring
4 party has to liquidate the insurer, sell its
5 assets, or consolidate or merge it with any
6 person, or to make any other material change in
7 its business or corporate structure or
8 management, are unfair and unreasonable to
9 policyholders of the insurer [~~and~~] or not in the
10 public interest;

11 (E) The competence, experience, and integrity of
12 those persons who would control the operation of
13 the insurer would not be in the interest of
14 policyholders of the insurer [~~and~~] or not in the
15 public interest; or

16 (F) The acquisition is likely to be hazardous or
17 prejudicial to the [~~insurance-buying~~] insurance-
18 buying public.

19 (2) The public hearing referred to in paragraph (1) shall
20 commence within [~~sixty~~] thirty days after the
21 statement required by subsection (a) is filed, except
22 that the hearing may commence within such additional



1 time as agreed to by the commissioner, the acquiring
2 party, and the person to be acquired, and at least
3 twenty days notice of the scheduled public hearing
4 shall be given by the commissioner to the person
5 filing the statement. Not less than seven days notice
6 of the public hearing shall be given by the person
7 filing the statement to the insurer and to any other
8 persons as may be designated by the commissioner. The
9 insurer shall give notice to its security holders.
10 The commissioner shall make a determination within
11 ~~[thirty days after the conclusion of the hearing.]~~ the
12 sixty-day period preceding the effective date of the
13 proposed transaction. At the hearing, the person
14 filing the statement, the insurer, any person to whom
15 notice of hearing was sent, and any other person whose
16 interest may be affected thereby shall have the right
17 to present evidence, examine and cross-examine
18 witnesses, and offer oral and written arguments and in
19 connection therewith shall be entitled to conduct
20 discovery proceedings in the same manner as is
21 presently allowed in chapter 91. All discovery



1 proceedings shall be concluded not later than three
2 days prior to the commencement of the public hearing.

3 (3) If the proposed acquisition of control requires the
4 approval of more than one commissioner, the public
5 hearing referred to in paragraph (2) may be held on a
6 consolidated basis upon request of the person filing
7 the statement referred to in subsection (a). The
8 person shall file the statement referred to in
9 subsection (a) with the National Association of
10 Insurance Commissioners within five days of making the
11 request for a public hearing. A commissioner may opt
12 out of a consolidated hearing, and shall provide
13 notice to the applicant of the opt-out within ten days
14 of the receipt of the statement referred to in
15 subsection (a). A hearing conducted on a consolidated
16 basis shall be public and shall be held within the
17 United States before the commissioners of the states
18 in which the insurers are domiciled. The
19 commissioners shall hear and receive evidence. A
20 commissioner may attend such hearing, in person or by
21 telecommunication.



1 (4) In connection with a change of control of a domestic
2 insurer, any determination by the commissioner that
3 the person acquiring control of the insurer shall be
4 required to maintain or restore the capital of the
5 insurer to the level required by the laws and rules of
6 this State shall be made not later than sixty days
7 after the date of notification of the change in
8 control submitted pursuant to subsection (a) (1).

9 ~~[(3)]~~ (5) The commissioner may retain at the acquiring
10 person's expense any attorneys, actuaries,
11 accountants, and other experts not otherwise a part of
12 the commissioner's staff as may be reasonably
13 necessary to assist the commissioner in reviewing the
14 proposed acquisition of control."

15 3. By amending subsection (g) to read:

16 "(g) The following shall be violations of this article:

17 (1) The failure to file any statement, amendment, or other
18 material required to be filed pursuant to subsections
19 (a) or (b); or

20 (2) The effectuation or any attempt to effectuate an
21 acquisition of, control of, divestiture of, or merger



1 with, a domestic insurer unless ~~[approval is given by]~~
2 the commissioner~~[-]~~ has given approval."

3 SECTION 9. Section 431:11-104.2, Hawaii Revised Statutes,
4 is amended by amending subsection (b) to read as follows:

5 "(b) This section and sections 431:11-104.3 through
6 431:11-104.6 shall not apply to the following:

7 ~~[(1) An acquisition subject to approval by the commissioner~~
8 ~~pursuant to section 431:11-104,~~

9 ~~-(2)]~~ (1) A purchase of securities solely for investment
10 purposes, so long as those securities are not used by
11 voting or otherwise to cause or attempt to cause the
12 substantial lessening of competition in any insurance
13 market in this State. If a purchase of securities
14 results in a presumption of control as defined in
15 section 431:11-102, it is not solely for investment
16 purposes unless the commissioner of the insurer's
17 state of domicile accepts a disclaimer of control or
18 affirmatively finds that control does not exist and
19 the disclaimer action or affirmative finding is
20 communicated by the domiciliary commissioner to the
21 commissioner;



1 [~~3~~] (2) The acquisition of a person by another person
2 when both persons are neither directly nor through
3 affiliates primarily engaged in the business of
4 insurance, if preacquisition notification is filed
5 with the commissioner in accordance with section
6 431:11-104.3 thirty days prior to the proposed
7 effective date of the acquisition. However, the
8 preacquisition notification is not required for
9 exclusion from this section and sections 431:11-104.3
10 through 431:11-104.6 if the acquisition would
11 otherwise be excluded by any other paragraph of this
12 subsection;

13 [~~4~~] (3) The acquisition of affiliated persons;

14 [~~5~~] (4) An acquisition if, as an immediate result of the
15 acquisition:

16 (A) In no market would the combined market share of
17 the involved insurers exceed five per cent of the
18 total market;

19 (B) There would be no increase in any market share;
20 or

21 (C) In no market would:



1 (i) The combined market share of the involved
2 insurers exceed twelve per cent of the total
3 market; and

4 (ii) The market share increase by more than two
5 per cent of the total market.

6 For the purpose of this paragraph, [~~a market~~] "market"
7 means direct written insurance premiums in this State
8 for a line of business as contained in the annual
9 statement required to be filed by insurers licensed to
10 do business in this State;

11 [~~(6)~~] (5) An acquisition for which a preacquisition
12 notification would be required pursuant to this
13 section due solely to the resulting effect on the
14 ocean marine insurance line of business; and

15 [~~(7)~~] (6) An acquisition of an insurer whose domiciliary
16 commissioner affirmatively finds that the insurer is
17 in failing condition; there is a lack of feasible
18 alternative to improving such condition; the public
19 benefits of improving the insurer's condition through
20 the acquisition exceed the public benefits that would
21 arise from not lessening competition; and those



1 findings are communicated by the domiciliary
2 commissioner to the commissioner[-] of this State."

3 SECTION 10. Section 431:11-105, Hawaii Revised Statutes,
4 is amended to read as follows:

5 "**§431:11-105 Registration of insurers.** (a) Every insurer
6 [~~who~~] that is authorized to do business in this State and [~~who~~]
7 is a member of an insurance holding company system shall
8 register with the commissioner, except a foreign insurer subject
9 to registration requirements and standards adopted by statute or
10 regulation in the jurisdiction of its domicile that are
11 substantially similar to those contained in this section and
12 section 431:11-106(a)(1), (b), and (d). The insurer shall file
13 a copy of the summary of its registration statement as required
14 by subsection (c) in each state in which that insurer is
15 authorized to do business if requested by the commissioner of
16 that state. Any insurer [~~who~~] that is subject to registration
17 under this section shall register within fifteen days after it
18 becomes subject to registration, and annually thereafter by
19 March 15 of each year for the previous calendar year, unless the
20 commissioner for good cause shown extends the time for
21 registration, and then within the extended time. The
22 commissioner may require any insurer [~~who~~] authorized to do



1 business in the state that is a member of [a] an insurance
2 holding company system [~~whē~~], and that is not subject to
3 registration under this section, to furnish a copy of the
4 registration statement or other information filed by the
5 insurance company with the insurance regulatory authority of its
6 domiciliary jurisdiction.

7 (b) Every insurer subject to registration shall file the
8 registration statement with the commissioner on a form and in a
9 format prescribed by the National Association of Insurance
10 Commissioners, which shall contain the following current
11 information:

- 12 (1) The capital structure, general financial condition,
13 ownership, and management of the insurer and any
14 person controlling the insurer;
- 15 (2) The identity and relationship of every member of the
16 insurance holding company system;
- 17 (3) The following agreements in force, and transactions
18 currently outstanding or [~~which~~] that have occurred
19 during the last calendar year between [~~such~~] the
20 insurer and its affiliates:



- 1 (A) Loans, other investments, or purchases, sales, or
2 exchanges of securities of the affiliates by the
3 insurer or of the insurer by its affiliates;
- 4 (B) Purchases, sales, or exchange of assets;
- 5 (C) Transactions not in the ordinary course of
6 business;
- 7 (D) Guarantees or undertakings for the benefit of an
8 affiliate [~~which~~] that result in an actual
9 contingent exposure of the insurer's assets to
10 liability, other than insurance contracts entered
11 into in the ordinary course of the insurer's
12 business;
- 13 (E) All management agreements, all service contracts,
14 and all cost-sharing arrangements;
- 15 (F) Reinsurance agreements;
- 16 (G) Dividends and other distributions to
17 shareholders; and
- 18 (H) Consolidated tax allocation agreements;
- 19 (4) Any pledge of the insurer's stock, including stock of
20 any subsidiary or controlling affiliate, for a loan
21 made to any member of the insurance holding company
22 system; [~~and~~]



1 (5) If requested by the commissioner, financial statements
2 of an insurance holding company system. Financial
3 statements may include but are not limited to annual
4 audited financial statements filed with the Securities
5 and Exchange Commission pursuant to the Securities Act
6 of 1933, as amended, or the Securities Exchange Act of
7 1934, as amended. An insurer required to file
8 financial statements pursuant to this paragraph may
9 satisfy the request by providing the commissioner with
10 the most recently filed financial statements of the
11 parent corporation that have been filed with the
12 Securities and Exchange Commission;

13 [~~5~~] (6) Other matters concerning transactions between
14 registered insurers and any affiliates as may be
15 included from time to time in any registration forms
16 adopted or approved by the commissioner[-]; and

17 (7) Statements that the insurer's board of directors
18 oversees corporate governance and internal controls
19 and that the insurer's officers or senior management
20 have approved, implemented, and continue to maintain
21 and monitor corporate governance and internal control
22 procedures.



1 (c) All registration statements shall contain a summary
2 outlining all items in the current registration statement
3 representing changes from the prior registration statement.

4 (d) No information need be disclosed on the registration
5 statement filed pursuant to subsection (b) if the information is
6 not material for the purposes of this section. Unless the
7 commissioner by rule or order provides otherwise, sales,
8 purchases, exchanges, loans or extensions of credit,
9 investments, or guarantees involving one-half of one per cent or
10 less of an insurer's admitted assets as of the [~~thirty-first day~~
11 ~~of~~] December 31 next preceding shall not be deemed material for
12 purposes of this section.

13 (e) Subject to section 431:11-106(b), each registered
14 insurer shall report to the commissioner all dividends and other
15 distributions to shareholders within fifteen business days
16 following the declaration thereof.

17 (f) Any person within an insurance holding company system
18 subject to registration shall be required to provide complete
19 and accurate information to an insurer, where the information is
20 reasonably necessary to enable the insurer to comply with the
21 provisions of this article.



1 (g) The commissioner shall terminate the registration of
2 any insurer [~~which~~] that demonstrates that it no longer is a
3 member of an insurance holding company system.

4 (h) The commissioner may require or allow two or more
5 affiliated insurers subject to registration to file a
6 consolidated registration statement.

7 (i) The commissioner may allow an insurer [~~who~~] that is
8 authorized to do business in this State and [~~who~~] is part of an
9 insurance holding company system to register on behalf of any
10 affiliated insurer [~~who~~] that is required to register under
11 subsection (a) and to file all information and material required
12 to be filed under this section.

13 (j) The provisions of this section shall not apply to any
14 insurer, information, or transaction if and to the extent that
15 the commissioner by rule or order shall exempt the same from the
16 provisions of this section.

17 (k) Any person may file with the commissioner a disclaimer
18 of affiliation with any authorized insurer or a disclaimer may
19 be filed by the insurer or any member of an insurance holding
20 company system. The disclaimer shall fully disclose all
21 material relationships and bases for affiliation between the
22 person and the insurer as well as the basis for disclaiming the



1 affiliation. [~~After a disclaimer has been filed, the insurer~~
2 ~~shall be relieved of any duty to register or report under this~~
3 ~~section which may arise out of the insurer's relationship with~~
4 ~~the person unless and until the commissioner disallows the~~
5 ~~disclaimer. The commissioner shall disallow a disclaimer only~~
6 ~~after furnishing all parties in interest with notice and~~
7 ~~opportunity to be heard and after making specific findings of~~
8 ~~fact to support the disallowance.] A disclaimer of affiliation
9 shall be deemed to have been granted unless the commissioner,
10 within thirty days following receipt of a complete disclaimer,
11 notifies the filing party that the disclaimer is disallowed. In
12 the event of disallowance, the disclaiming party may request an
13 administrative hearing, which shall be granted. The disclaiming
14 party shall be relieved of its duty to register under this
15 section if approval of the disclaimer has been granted by the
16 commissioner, or if the disclaimer is deemed to have been
17 approved.~~

18 (1) The ultimate controlling person of every insurer
19 subject to registration shall also file an annual enterprise
20 risk report. The ultimate controlling person of a domestic
21 insurance holding company system shall be exempt from this
22 requirement. The report shall identify, to the best of the



1 ultimate controlling person's knowledge and belief, the material
2 risks within the insurance holding company system that could
3 pose enterprise risk to the insurer. The report shall be filed
4 with the lead state commissioner of the insurance holding
5 company system as determined by the procedures within the
6 Financial Analysis Handbook adopted by the National Association
7 of Insurance Commissioners.

8 [~~1~~] (m) The failure to file a registration statement
9 [~~or~~], any summary of the registration statement, or enterprise
10 risk filing required by this section within the time specified
11 for [~~such~~] the filing shall be a violation of this section."

12 SECTION 11. Section 431:11-106, Hawaii Revised Statutes,
13 is amended as follows:

14 1. By amending subsection (a) to read:

15 "(a) (1) Transactions within [a] an insurance holding
16 company system to which an insurer subject to
17 registration is a party shall be subject to the
18 following standards:
19 (A) The terms shall be fair and reasonable;
20 (B) Agreements for cost sharing services and
21 management shall include provisions as required
22 by rule adopted by the commissioner;



1 ~~[(B)]~~ (C) Charges or fees for services performed shall
2 be reasonable;

3 ~~[(C)]~~ (D) Expenses incurred and payment received shall
4 be allocated to the insurer in conformity with
5 customary insurance accounting practices
6 consistently applied;

7 ~~[(D)]~~ (E) The books, accounts, and records of each
8 party to all transactions shall be maintained so
9 as to clearly and accurately disclose the nature
10 and details of the transactions including the
11 accounting information necessary to support the
12 reasonableness of the charges or fees to the
13 respective parties; and

14 ~~[(E)]~~ (F) The insurer's surplus as regards
15 policyholders following any dividends or
16 distributions to shareholder affiliates shall be
17 reasonable in relation to the insurer's
18 outstanding liabilities and adequate to its
19 financial needs;

20 (2) The following transactions involving a domestic
21 insurer and any person in its insurance holding
22 company system, including amendments or modifications

1 of affiliate agreements previously filed pursuant to
2 this section, which are subject to any materiality
3 standards found in subparagraphs (A) through (G),
4 shall not be entered into unless the insurer has
5 notified the commissioner in writing of its intention
6 to enter into the transaction at least thirty days
7 prior to the transaction, or a shorter period as the
8 commissioner may permit, and the commissioner has not
9 disapproved the transaction within that period[+];
10 provided that the notice for amendments or
11 modifications shall include the reasons for the change
12 and the financial impact on the domestic insurer;
13 provided further that informal notice shall be
14 reported within thirty days after a termination of a
15 previously filed agreement to the commissioner for
16 determination of the type of filing required, if any:
17 (A) Sales, purchases, exchanges, loans [øx],
18 extensions of credit, [guarantees₇] or
19 investments; provided that the transactions are
20 equal to or exceed:
21 (i) With respect to nonlife insurers, the lesser
22 of three per cent of the insurer's admitted



1 assets or twenty-five per cent of surplus as
2 regards policyholders [each] as of the
3 [~~thirty first day of~~] December 31 next
4 preceding; or

5 (ii) With respect to life insurers, three per
6 cent of the insurer's admitted assets as of
7 the [~~thirty first day of~~] December 31 next
8 preceding;

9 (B) Loans or extensions of credit to any person who
10 is not an affiliate, where the insurer makes the
11 loans or extensions of credit with the agreement
12 or understanding that the proceeds of the
13 transactions, in whole or in substantial part,
14 are to be used to make loans or extensions of
15 credit to, to purchase assets of, or to make
16 investments in, any affiliate of the insurer
17 making the loans or extensions of credit;
18 provided that the transactions are equal to or
19 exceed:

20 (i) With respect to nonlife insurers, the lesser
21 of three per cent of the insurer's admitted
22 assets or twenty-five per cent of surplus as



1 regards policyholders [~~each~~] as of the
2 [~~thirty first day of~~] December 31 next
3 preceding; or

4 (ii) With respect to life insurers, three per
5 cent of the insurer's admitted assets as of
6 the [~~thirty first day of~~] December 31 next
7 preceding;

8 (C) Reinsurance agreements or modifications to
9 reinsurance agreements, including:

10 (i) All reinsurance pooling agreements;

11 (ii) Agreements in which the reinsurance premium
12 or a change in the insurer's liabilities, or
13 the projected reinsurance premium or a
14 change in the insurer's liabilities in any
15 of the next three years, equals or exceeds
16 five per cent of the insurer's surplus as
17 regards policyholders, as of the [~~thirty-~~
18 ~~first day of~~] December 31 next preceding,
19 including those agreements that may require
20 as consideration the transfer of assets from
21 an insurer to a nonaffiliate, if an
22 agreement or understanding exists between



1 the insurer and nonaffiliate that any
2 portion of the assets will be transferred to
3 one or more affiliates of the insurer;

4 (D) All management agreements, service contracts, tax
5 allocation agreements, guarantees, and all cost-
6 sharing arrangements; [and]

7 (E) Guarantees when made by a domestic insurer;
8 provided that a guarantee that is quantifiable as
9 to amount shall not be subject to the notice
10 requirements of this paragraph unless it exceeds
11 the lesser of one-half of one per cent of the
12 insurer's admitted assets or ten per cent of
13 surplus as regards policyholders as of the
14 December 31 next preceding. All guarantees that
15 are not quantifiable as to amount are subject to
16 the notice requirements of this paragraph;

17 (F) Direct or indirect acquisitions or investments in
18 a person that controls the insurer or in an
19 affiliate of the insurer in an amount that,
20 together with its present holdings in such
21 investments, exceeds two and one-half per cent of
22 the insurer's surplus to policyholders. Direct



1 or indirect acquisitions or investments in
2 subsidiaries acquired pursuant to section 431:11-
3 103, or in nonsubsidiary insurance affiliates
4 that are subject to this article, are exempt from
5 this requirement; and

6 [-E-] (G) Any material transactions, specified by
7 rule, [~~which~~] that the commissioner determines
8 may adversely affect the interests of the
9 insurer's policyholders.

10 Nothing in this [~~section~~] paragraph shall be deemed to
11 authorize or permit any transactions [~~which,~~] that, in
12 the case of an insurer not a member of the same
13 insurance holding company system, would be otherwise
14 contrary to law;

15 (3) A domestic insurer may not enter into transactions
16 that are part of a plan or series of like transactions
17 with persons within the insurance holding company
18 system if the purpose of those separate transactions
19 is to avoid the statutory threshold amount and thus
20 avoid the review that would otherwise occur; provided
21 that the commissioner determines that the separate
22 transactions were entered into over any twelve-month



1 period for that purpose, the commissioner may exercise
2 the commissioner's authority under section 431:11-111;

3 (4) The commissioner, in reviewing transactions pursuant
4 to [~~subsection (a)(2),~~] paragraph (2), shall consider
5 whether the transactions comply with the standards set
6 forth in [~~subsection (a)(1),~~] paragraph (1) and whether
7 the transactions may adversely affect the interests of
8 policyholders; and

9 (5) The commissioner shall be notified within thirty days
10 of any investment of the domestic insurer in any one
11 [~~person~~] corporation if the total investment in the
12 [~~person~~] corporation by the insurance holding company
13 system exceeds ten per cent of the [~~person's~~]
14 corporation's voting securities [~~or the domestic~~
15 ~~insurer possesses control of the person as the term~~
16 ~~"control" is defined in section 431:11-102]."~~

17 2. By amending subsection (c) to read:

18 "(c) (1) Notwithstanding the control of a domestic insurer
19 by any person, the officers and directors of the
20 insurer shall not thereby be relieved of any
21 obligation or liability to which they would otherwise
22 be subject to by law. The insurer shall be managed so



1 as to assure its separate operating identity
2 consistent with this article.

3 (2) Nothing [~~herein~~] in this section shall preclude a
4 domestic insurer from having or sharing a common
5 management or cooperative or joint use of personnel,
6 property, or services with one or more other persons
7 under arrangements meeting the standards of subsection
8 (a) (1).

9 (3) At least one-third of the directors of a domestic
10 insurer, and at least one-third of the members of each
11 committee of the board of directors of any domestic
12 insurer, shall be persons who are not officers or
13 employees of the insurer or of any entity controlling,
14 controlled by, or under common control with the
15 insurer and who are not beneficial owners of a
16 controlling interest in the voting stock of the
17 insurer or entity. At least one such person shall be
18 included in any quorum for the transaction of business
19 at any meeting of the board of directors or any
20 committee thereof.

21 (4) The board of directors of a domestic insurer shall
22 establish one or more committees composed solely of



1 directors who are not officers or employees of the
2 insurer or of any entity controlling, controlled by,
3 or under common control with the insurer and who are
4 not beneficial owners of a controlling interest in the
5 voting stock of the insurer or any such entity. The
6 committee or committees shall have responsibility for
7 nominating candidates for director for election by
8 shareholders or policyholders, evaluating the
9 performance of officers deemed to be principal
10 officers of the insurer, and recommending to the board
11 of directors the selection and compensation of the
12 principal officers.

13 (5) Paragraphs (3) and (4) shall not apply to:

14 (A) A domestic insurer if the person controlling the
15 insurer, such as an insurer, a mutual insurance
16 holding company, or a publicly held corporation,
17 has a board of directors and committees thereof
18 that meet the requirements of paragraphs (3) and
19 (4) with respect to the controlling entity; or

20 (B) A domestic insurance holding company system.

21 (6) An insurer may make application to the commissioner
22 for a waiver from the requirements of this subsection



1 if the insurer's annual direct written and assumed
2 premium, excluding premiums reinsured with the Federal
3 Crop Insurance Corporation and National Flood
4 Insurance Program, is less than \$300,000,000. An
5 insurer may also make application to the commissioner
6 for a waiver from the requirements of this subsection
7 based upon unique circumstances. The commissioner may
8 consider various factors including but not limited to
9 the type of business entity, volume of business
10 written, availability of qualified board members, or
11 the ownership or organizational structure of the
12 entity."

13 SECTION 12. Section 431:11-107, Hawaii Revised Statutes,
14 is amended to read as follows:

15 "**§431:11-107 Examination.** (a) Subject to the limitation
16 contained in this section and in addition to the powers [~~which~~
17 that the commissioner has under article 2 relating to the
18 examination of insurers, the commissioner [~~shall also have the~~
19 ~~power to order~~] may examine any insurer registered under section
20 431:11-105 [~~to produce records, books, or other information~~
21 ~~papers in the possession of the insurer or its affiliates~~] as
22 [~~are~~] reasonably necessary to ascertain the financial condition



1 of the insurer [~~or to determine compliance with this article.~~
2 ~~In the event the insurer fails to comply with the order, the~~
3 ~~commissioner shall have the power to examine the insurer's~~
4 ~~affiliates to obtain the information.], including the enterprise
5 risk to the insurer by the ultimate controlling party, or by any
6 entity or combination of entities within the insurance holding
7 company system, or by the insurance holding company system on a
8 consolidated basis.~~

9 (b) To evaluate whether the operations of an ultimate
10 controlling person, affiliate, or any combination of entities
11 within the insurance holding company system may adversely and
12 materially affect the operations, management, or financial
13 condition of an insurer, the commissioner may order any insurer
14 registered under section 431:11-105 to:

15 (1) Produce the records, books, or other information in
16 the possession of the insurer or its affiliates that
17 are reasonably necessary to determine compliance with
18 this article; and

19 (2) Determine compliance with this article, produce
20 information not in the possession of the insurer if
21 the insurer can obtain access to that information
22 pursuant to contractual relationships, statutory



1 obligations, or other methods. In the event the
2 insurer cannot obtain the information requested by the
3 commissioner, the insurer shall provide the
4 commissioner a detailed explanation of the reason that
5 the insurer cannot obtain the information and the
6 identity of the holder of information. Whenever it
7 appears to the commissioner that the detailed
8 explanation is without merit, the commissioner may
9 require, after notice and hearing, the insurer to pay
10 a penalty of not less than \$100 and not more than \$500
11 for each day's delay, or may suspend or revoke the
12 insurer's license.

13 ~~[(b)]~~ (c) The commissioner may retain at the registered
14 insurer's expense attorneys, actuaries, accountants, and other
15 experts not otherwise a part of the commissioner's staff as
16 shall be reasonably necessary to assist in the conduct of the
17 examination under ~~[subsection (a).]~~ subsections (a) and (e).
18 Any persons so retained shall be under the direction and control
19 of the commissioner and shall act in a purely advisory capacity.

20 ~~[(e)]~~ (d) Each registered insurer producing for
21 examination records, books, and papers pursuant to ~~[subsection~~



1 ~~(a)]~~ subsections (a) and (e) shall be liable for and shall pay
2 the expense of the examination in accordance with article 2.

3 (e) In the event that:

4 (1) An insurer fails to comply with an order pursuant to
5 subsection (b); or

6 (2) The commissioner, upon evaluating whether the
7 operations of an ultimate controlling person,
8 affiliate, or any combination of entities within the
9 insurance holding company system pursuant to
10 subsection (b), has reasonable cause to believe that:

11 (A) The operations of the ultimate controlling
12 person, affiliate, or any combination of entities
13 within the insurance holding company system may
14 adversely and materially affect the operations,
15 management, or financial condition of an insurer;

16 or

17 (B) The commissioner is unable to obtain relevant
18 information from the controlled insurer,
19 the commissioner may examine the ultimate controlling
20 person, affiliate, or any combination of entities
21 within the insurance holding company system.



1 The commissioner may also issue subpoenas, administer
2 oaths, and examine under oath any person for purposes of
3 determining compliance with this section. Upon the failure or
4 refusal of any person to obey a subpoena, the commissioner may
5 petition a court of competent jurisdiction, and upon proper
6 showing, the court may enter an order compelling the witness to
7 appear and testify or produce documentary evidence. Failure to
8 obey the court order shall be punishable as contempt of court.
9 Every person shall be obliged to attend as a witness at the
10 place specified in the subpoena, when subpoenaed, anywhere
11 within the State. Every person shall be entitled to the same
12 fees and mileage, if claimed, as a witness in a court of record,
13 which fees, mileage, and actual expense, if any, necessarily
14 incurred in securing the attendance of witnesses, and their
15 testimony, shall be itemized and charged against, and be paid
16 by, the company being examined.

17 (f) An examination of affiliates by the commissioner under
18 subsection (e) shall specify the grounds for the examination and
19 shall be confined to those specified grounds."

20 SECTION 13. Section 431:11-108, Hawaii Revised Statutes,
21 is amended to read as follows:



1 "~~§431:11-108 Confidential treatment. [All information,~~
2 ~~documents, and copies thereof]~~ (a) Documents, materials, or
3 other information in the possession or control of the insurance
4 division that are obtained by or disclosed to the commissioner
5 or any other person in the course of an examination or
6 investigation made pursuant to section 431:11-107 and all
7 information reported pursuant to [section] sections 431:11-
8 104(b) (12) and (13), 431:11-105, and [section] 431:11-106, shall
9 be [given] confidential [treatment,] by law and privileged,
10 shall not be disclosable under chapter 92F, shall not be subject
11 to subpoena, and shall not be [made public by the commissioner,
12 the National Association of Insurance Commissioners, or any
13 other person, except to insurance departments of other states,
14 without the prior written consent of the insurer to which it
15 pertains unless the commissioner, after giving the insurer and
16 its affiliates who would be affected thereby notice and
17 opportunity to be heard, determines that the interest of the
18 policyholders, shareholders or the public will be served by the
19 publication thereof, in which event the commissioner may publish
20 all or any part thereof in such manner as the commissioner may
21 deem appropriate.] subject to discovery or admissible in
22 evidence in any private civil action. The commissioner may use



1 the documents, materials, or other information in the
2 furtherance of any regulatory or legal action brought as part of
3 the commissioner's official duties. The commissioner shall not
4 otherwise make the documents, materials, or other information
5 public without prior written consent of the insurer to which it
6 pertains unless the commissioner, after giving the insurer and
7 its affiliates who would be affected thereby notice and
8 opportunity to be heard, determines that the interest of the
9 policyholders, shareholders, or the public will be served by the
10 publication thereof, in which event the commissioner may publish
11 all or any part in such manner as may be deemed appropriate.

12 (b) Neither the commissioner nor any person who received
13 documents, materials, or other information while acting under
14 the authority of the commissioner or with whom the documents,
15 materials, or other information are shared pursuant to this
16 article shall be permitted or required to testify in any private
17 civil action concerning any confidential documents, materials,
18 or information subject to subsection (a).

19 (c) To assist in the performance of the commissioner's
20 duties, the commissioner:

21 (1) May share documents, materials, or other information,
22 including the confidential and privileged documents,



1 materials, or information subject to subsection (a),
2 with other state, federal, and international
3 regulatory agencies, with the National Association of
4 Insurance Commissioners and its affiliates and
5 subsidiaries, and with state, federal, and
6 international law enforcement authorities, including
7 members of any supervisory college described in
8 section 431:11-_____ ; provided that the recipient
9 agrees in writing to maintain the confidentiality and
10 privileged status of the document, material, or other
11 information, and has verified in writing the legal
12 authority to maintain confidentiality;

13 (2) Notwithstanding paragraph (1) to the contrary, may
14 only share confidential and privileged documents,
15 material, or information reported pursuant to section
16 431:11-105(1) with commissioners of states having
17 statutes or regulations substantially similar to
18 subsection (a) and who have agreed in writing not to
19 disclose such information;

20 (3) May receive documents, materials, or information,
21 including otherwise confidential and privileged
22 documents, materials, or information from the National



1 Association of Insurance Commissioners and its
2 affiliates and subsidiaries and from regulatory and
3 law enforcement officials of other foreign or domestic
4 jurisdictions, and shall maintain as confidential or
5 privileged any document, material, or information
6 received with notice or the understanding that it is
7 confidential or privileged under the laws of the
8 jurisdiction that is the source of the document,
9 material, or information; and

10 (4) Shall enter into written agreements with the National
11 Association of Insurance Commissioners governing
12 sharing and use of information provided pursuant to
13 this article and consistent with this subsection that
14 shall:

15 (A) Specify procedures and protocols regarding the
16 confidentiality and security of information
17 shared with the National Association of Insurance
18 Commissioners and its affiliates and subsidiaries
19 pursuant to this article, including procedures
20 and protocols for sharing by the National
21 Association of Insurance Commissioners with other
22 state, federal, or international regulators;



1 (B) Specify that ownership of information shared with
2 the National Association of Insurance
3 Commissioners and its affiliates and subsidiaries
4 pursuant to this article remains with and for use
5 by the commissioner and the National Association
6 of Insurance Commissioners and is subject to the
7 direction of the commissioner;

8 (C) Require that prompt notice be given to an insurer
9 whose confidential information is in the
10 possession of the National Association of
11 Insurance Commissioners pursuant to this article
12 and require that the insurer is subject to a
13 request or subpoena from the National Association
14 of Insurance Commissioners for disclosure or
15 production; and

16 (D) Require the National Association of Insurance
17 Commissioners and its affiliates and subsidiaries
18 to consent to intervention by an insurer in any
19 judicial or administrative action in which the
20 National Association of Insurance Commissioners
21 and its affiliates and subsidiaries may be
22 required to disclose confidential information



1 about the insurer shared pursuant to this
2 article.

3 (d) The sharing of information by the commissioner
4 pursuant to this article shall not constitute a delegation of
5 regulatory authority or rulemaking, and the commissioner shall
6 be solely responsible for the administration, execution, and
7 enforcement of this article.

8 (e) No waiver of any applicable privilege or claim of
9 confidentiality in the documents, materials, or information
10 shall occur as a result of disclosure to the commissioner under
11 this section or as a result of sharing as authorized in
12 subsection (c).

13 (f) Documents, materials, or information in the possession
14 or control of the National Association of Insurance
15 Commissioners pursuant to this article shall be confidential by
16 law and privileged, shall not be disclosable under chapter 92F,
17 shall not be subject to subpoena, and shall not be subject to
18 discovery or admissible in evidence in any private civil
19 action."

20 SECTION 14. Section 431:11-111, Hawaii Revised Statutes,
21 is amended to read as follows:



1 "~~§~~431:11-111 **Sanctions.** (a) Any insurer failing, without
2 just cause, to file any registration statement as required in
3 this article shall be ~~[liable for]~~ required, after notice and
4 hearing, to pay a fine in an amount of not less than \$100 and
5 not more than \$500 for each ~~[day of delinquency,]~~ day's delay,
6 to be recovered by the commissioner, and the penalty so
7 recovered shall be paid into the compliance resolution fund. The
8 commissioner may reduce the penalty if the insurer demonstrates
9 to the commissioner that the imposition of the penalty would
10 constitute a financial hardship to the insurer.

11 (b) Every director or officer of an insurance holding
12 company system who knowingly violates, participates in, or
13 assents to, or who knowingly permits any of the officers or
14 agents of the insurer to engage in any transactions or make
15 investments that have not been properly reported or submitted
16 pursuant to ~~[sections]~~ section 431:11-105(a), 431:11-106(a)(2),
17 or 431:11-106(b), or ~~[who]~~ that violates this article, shall ~~[be~~
18 ~~subject to a fine]~~ pay, in their individual capacity, a civil
19 forfeiture of not less than \$100 and not more than \$10,000 per
20 violation~~[-]~~, after notice and hearing before the commissioner.
21 In determining the amount of the ~~[fine,]~~ civil forfeiture, the
22 commissioner shall take into account the appropriateness of the



1 ~~[fine]~~ civil forfeiture with respect to the gravity of the
2 violation, the history of previous violations, and ~~[such]~~ other
3 matters as justice may require.

4 (c) Whenever it appears to the commissioner that any
5 insurer subject to this article or any director, officer,
6 employee, or agent thereof has engaged in any transaction or
7 entered into a contract ~~[which]~~ that is subject to section
8 431:11-106 and ~~[which]~~ that would not have been approved had the
9 approval been requested, the commissioner may order the insurer
10 to cease and desist immediately any further activity under that
11 transaction or contract. After notice and hearing, the
12 commissioner may also order the insurer to void any of the
13 contracts and restore the status quo if that action is in the
14 best interest of the policyholders, creditors, or the public.

15 (d) Whenever it appears to the commissioner that any
16 insurer or any director, officer, employee, or agent thereof has
17 committed a wilful violation of this article, the commissioner
18 may cause criminal proceedings to be instituted against the
19 insurer or the responsible director, officer, employee, or agent
20 thereof. Any insurer ~~[who]~~ that wilfully violates this article
21 ~~[shall be subject to a fine of]~~ may be fined not less than \$100
22 and not more than \$10,000 per violation. Any individual who



1 wilfully violates this article [~~shall be subject to a fine in~~
2 ~~the individual's capacity of~~] may be fined in the person's
3 individual capacity not less than \$100 and not more than \$10,000
4 per violation[7] or be imprisoned for not more than one year[7],
5 or both.

6 (e) Any officer, director, or employee of an insurance
7 holding company system who wilfully and knowingly subscribes to
8 or makes, or causes to be made, any false statements, false
9 reports, or false filings with the intent to deceive the
10 commissioner in the performance of the commissioner's duties
11 under this article, upon conviction thereof, shall be imprisoned
12 for not more than one year[7] or fined \$5,000, or both. Any
13 fines imposed shall be paid by the officer, director, or
14 employee in the person's individual capacity.

15 (f) Whenever it appears to the commissioner that any
16 person has committed a violation of section 431:11-104 and that
17 prevents the full understanding of the enterprise risk to the
18 insurer by affiliates or by the insurance holding company
19 system, the violation may serve as an independent basis for
20 disapproving dividends or distributions and for placing the
21 insurer under an order of supervision in accordance with part 2
22 of article 15."



1 **PART V**

2 SECTION 15. Statutory material to be repealed is bracketed

3 and stricken. New statutory material is underscored.

4 SECTION 16. This Act shall take effect on July 1, 2014;

5 provided that Part I shall take effect on January 1, 2015;

6 provided further that Part IV shall take effect on January 1,

7 2016.



Report Title:

Insurance; Model Laws; Reinsurance; Insurance Valuation; Life Insurance; Insurance Holding Companies

Description:

Adopts revisions to the National Association of Insurance Commissioners' model laws on Credit for Reinsurance Model Act (Part I), Standard Valuation Law (Part II), Standard Nonforfeiture for Life Insurance (Part III), and Insurance Holding Company System Regulatory Act (Part IV). Part I takes effect 01/01/2015. Part IV takes effect 01/01/2016. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

